



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSDS-DR, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an adjourned ex-parte application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return double the security deposit, pursuant to section 38 of the *Act*; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 11:32 A.M. to enable the landlord to call into this teleconference hearing scheduled for 11:00 A.M. The landlord did not attend the hearing. The tenants, represented by agents LL and OE (the tenant), attended the hearing and were 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. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

I accept the tenant's testimony that the landlord was served with the application, interim decision of adjourned ex parte application and evidence (the materials) by registered mail on July 17, 2020, in accordance with section 89(1)(c) of the *Act* (the tracking number is recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on July 22, 2020, in accordance with section 90 (a) of the *Act*.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the security deposit?
2. an authorization to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained to the attending party it is their obligation to present the evidence, pursuant to Rule of Procedure 7.4.

The tenant affirmed the fixed term tenancy agreement was signed on February 22, 2020, the landlord collected a security deposit of \$1,525.00 and still holds it in trust. Monthly rent was supposed to be \$3,050.00 due on the first day of the month. The tenants did not move in as they did not travel to Canada due to Covid19. A copy of the tenancy agreement was submitted into evidence.

The tenancy agreement indicates the tenancy was supposed to start on April 04, 2020 and end on April 04, 2020. However, the tenants explained the tenancy was supposed to last one year, thus the correct tenancy end date would be April 04, 2021.

The tenant explained a written copy of the forwarding address was sent by registered mail to the landlord on June 09, 2020 (the tracking number is recorded on the cover page of this decision). The notice of forwarding address (RTB form 47) and its proof of service (RTB form 41) were submitted into evidence.

The tenant confirmed she did not authorize the landlord to retain the security deposit.

The tenant submitted into evidence the tenancy agreement, an electronic payment receipt for \$1,525.00 on February 22, 2020, and a monetary order worksheet (RTB form 40), which indicates the tenancy ended on March 16, 2020.

### Analysis

Section 16 of the Act states:

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.

Based on the tenant's testimony and the tenancy agreement, I find although the tenants did not occupy the rental unit a tenancy commenced when the tenancy agreement was created.

Sections 44 and 45 of the Act state:

#### 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.

[...]

(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.

#### Tenant's notice

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.

**(2) A tenant may end a fixed term 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,

**(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and**

(c) 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.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Based on the tenant's testimony and the tenancy agreement, I find the tenancy is for a fixed term until April 04, 2021. Pursuant to sections 44 and 45 (2)(b) of the Act, the tenancy has not

ended.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

As the tenancy has not ended, the landlord's obligation under the *Act* to either return the deposit or file an application has not started. I find that this application is premature.

The tenant's application for an order for the landlords to return double the security deposit is dismissed with leave to reapply.

The tenant must bear the cost of the filing fee, as the tenant was not successful.

### Conclusion

I dismiss the tenants application with 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: September 02, 2020

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Residential Tenancy Branch