



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the landlord: MNDCL-S FFL  
For the tenants: MNSDS-DR FFT

### Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlord applied for monetary order in the amount of \$1,700.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee. The tenants applied for a monetary order in the amount of \$1,650.00 for the return of their security deposit balance of \$1,550.00, and to recover the cost of the filing fee.

Attending the teleconference was the landlord and tenant CK (tenant). During the hearing the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing and make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties were aware of the application by the other party, I find the parties were sufficiently served in accordance with the Act.

### Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing.

The parties were advised that the decision would be emailed to the parties.

### Issues to be Decided

- Is either party entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

Neither party submitted a copy of the tenancy agreement. The parties agreed that a fixed-term tenancy began on November 1, 2019 and was scheduled to revert to a month to month tenancy after November 30, 2020. Monthly rent was \$3,200.00 and was due on the first day of each month. The tenants paid a security deposit of \$1,600.00 at the start of the tenancy, which the landlord continues to hold.

#### *Landlord's claim*

The landlord has claimed \$1,700.00, which is comprised of \$1,600.00 for the loss of the first half of May 2020 rent, plus the \$100.00 filing fee, as the tenants vacated the rental unit without written permission of the landlord. The landlord testified that they suffered a loss of \$1,700.00 for May 2020 as they were not able to secure new tenants until the second half of May 2020. The landlord stated that the new tenants paid \$1,600.00 for the last half of May 2020 rent.

The tenant stated that they provided notice by text on April 20, 2020 that they would be vacating the rental unit by the end of April 2020. A copy of the text was not submitted in evidence for my consideration. The landlord stated that the tenant texted "I may have to move out" but failed to provide a date in the original text. The landlord stated that they did not agree to end the tenancy early and are seeking half of May 2020 rent due to the tenants' breach of a fixed-term tenancy, plus the filing fee.

#### *Tenants' claim*

The tenants are seeking the return of their remaining \$1,550.00 security deposit, as the tenant testified that they gave the landlord permission to deduct \$50.00, which the landlord stated was not correct, as the landlord testified that they were not given permission to deduct any amount from the tenants' security deposit.

The tenant submitted a document that indicates that they provided their written forwarding address on April 30, 2020 on the outgoing condition inspection report. The landlord filed their application claiming against the tenants' security deposit on May 15, 2020.

### Analysis

Based on the documentary evidence and the testimony of the parties, and on the balance of probabilities, I find the following.

#### Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to provide sufficient evidence to prove their respective claims and to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the other party. Once that has been established, the parties must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the applicant party did what was reasonable to minimize the damage or losses that were incurred.

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.

#### Landlord's claim

**Item 1** – I have considered the evidence before me and find that section 45(2) of the Act applies, which states:

**Tenant's notice**

**45(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.

[Emphasis added]

Based on the above, I find the earliest the tenants could have provided written notice was November 30, 2020, which is when the tenancy would have reverted to a month to month tenancy, and that the tenants had no right under the Act to give a notice to end tenancy earlier than that date. Therefore, I find the tenants breached the fixed-term tenancy by vacating on April 30, 2020 and that the tenants also breached section 26 of the Act. Section 26(1) of the Act applies and states:

**Rules about payment and non-payment of rent**

**26(1)A tenant must pay rent when it is due under the tenancy agreement,** whether or not the landlord complies with this Act, the regulations or the tenancy agreement, **unless the tenant has a right under this Act to deduct all or a portion of the rent.**

[Emphasis added]

I find the tenants have failed to provide sufficient evidence that the tenants had any right under the Act not to pay May 2020 rent. Section 7 of the Act and part four of the four-part test for damages or loss described above, requires the landlord to attempt to minimize their loss, which I find the landlord did by securing new tenants who paid \$1,600.00 for the last half of May 2020 and from that point forward, the same monthly rent of \$3,200.00 per month. Therefore, I find the landlord has met the burden of proof and I award the landlord **\$1,600.00** for loss of the first half of May 2020 rent as claimed.

**I caution** the tenants not to breach section 45(2) or 26(1) of the Act in the future.

As the landlord's application had merit, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under section 72 of the Act.

Tenants' claim

The tenants are seeking the return of their security deposit. As the tenants' written forwarding address was provided on April 30, 2020 and the landlord's application was filed on May 15, 2020, which claims against the tenants' security deposit, I find the landlord filed their application within the 15-day timeline as provided pursuant to section 38 of the Act. Therefore, I will now deal with the tenants' security deposit of \$1,600.00.

As the landlord has established a total monetary claim of **\$1,700.00** comprised of \$1,600.00 for the loss of the first portion of May 2020 rent plus the \$100.00 filing fee, I authorize the landlord to offset from that amount, the tenants' entire security deposit of \$1,600.00, which has accrued \$0.00 in interest since the start of the tenancy. I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of **\$100.00** pursuant to section 67 of the Act.

Given the above, I dismiss the tenants' application as I find they are not entitled to the return of any portion of their security deposit, as the security deposit has been used to offset the money owing to the landlord by the tenants as noted above. I do not grant the tenants the recovery of the filing fee as a result.

Conclusion

The landlord's claim is fully successful.

The tenants' claim is dismissed.

Pursuant to section 38 of the Act, I have offset the tenants' \$1,600.00 security deposit, which has accrued \$0.00 in interest under the Act from the landlord's monetary claim of \$1,700.00 for a total amount owing by the tenants to the landlord in the amount of \$100.00.

The landlord has been authorized to retain the tenants' full \$1,600.00 security deposit under the Act. The landlord is granted a monetary order pursuant to section 67 of the Act in the balance owing by the tenants to the landlord in the amount of \$100.00. The monetary order must be served on the tenants by the landlord. The monetary order may then be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The tenants may be held liable for the costs associated with enforcing the monetary order.

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 30, 2020

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Residential Tenancy Branch