



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SESTO HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S;    MNSDS-DR, FFT

### Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to retain the tenants' security deposit, pursuant to section 38.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- authorization to obtain a return of the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The landlord's two agents, landlord LP ("landlord") and "landlord LD" and the two tenants, female tenant ("tenant") and "male tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 35 minutes.

The landlord confirmed that her family owned the rental unit and that she was a shareholder for the landlord company named in this application and that she had permission to speak on its behalf. The landlord confirmed that landlord LD was the building manager for the rental unit and that she had permission to represent the landlord company as well.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Both parties confirmed that they were ready to proceed with this hearing.

### Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to retain the tenants' security deposit?

Are the tenants entitled to a return of their security deposit?

Are the tenants entitled to recover the filing fee for their application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on December 1, 2019 for a fixed term ending on December 31, 2020. The tenancy ended on June 30, 2020. No notice to vacate was provided by the tenants to the landlord. Monthly rent of \$1,410.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenants and the landlords continue to retain this deposit. Both parties signed a written tenancy agreement. A move-in condition inspection report was completed but a move-out condition inspection report was not completed. The tenants provided a written forwarding address to the landlords on July 7, 2020, by way of a letter. The tenants did not provide any written permission for the landlords to keep any part of their security deposit. The landlords filed their application to retain the deposit on July 16, 2020.

The landlord testified that the landlords were seeking a monetary order of \$700.00 and to retain the tenants' security deposit of \$700.00 towards this monetary order. She confirmed that the landlords were no longer seeking the \$1,410.00 for a full month's rent that was originally sought in their application. The landlords seek half a month's rent of \$700.00 for July 2020. The landlord stated that the landlords were unable to re-rent the unit from July 1 until July 15, 2020, because the tenants breached the fixed term tenancy agreement and did not provide any notice to vacate the rental unit. Landlord LD stated that she found out the tenants were moving when she saw the male tenant loading furniture into a truck at the rental property on June 30, 2020, she cleaned the rental unit on July 2, 2020 when the keys were returned by the tenants, and the unit was

listed for re-rental around July 3 or 4, so it was rented as soon as possible on July 15, 2020.

The tenants dispute the landlords' application. The tenant stated that the tenants did not provide notice to vacate because the landlords were trying to evict them, so they had to find a place and leave during the covid-19 pandemic. She claimed that on June 7, 2020, she received a text message from landlord LD saying that she would be getting a written notice from the landlord, regarding fighting and the right to quiet enjoyment, and that the landlord would contact the police. The tenant asked if it was a notice of eviction. The tenant said that on June 18, the tenants got a notice regarding the dumpster and on June 26, a notice was received regarding laundry. She maintained that she checked the mailbox everyday to see if there was an eviction notice. On June 30, landlord LD saw the male tenant loading up furniture, and told the tenant in person that the tenants would be getting an eviction notice. On June 30, 2020, after settling into her new place, the tenant said that she called landlord LD, who was emotional, cried, said she was busy with family issues and the hospital, and said she just wanted a meeting regarding the noise, and that there were more steps before getting to eviction. She maintained that if she knew it was just a meeting, rather than an eviction, the tenants would not have had to move and find a new place so quickly.

The tenants seek the return of their security deposit of \$700.00 plus the \$100.00 application filing fee from the landlords. They claim that because the landlords did not complete a move-out condition inspection report, the landlords have forfeited their right to keep the security deposit.

## Analysis

### Landlords' Application

Subsection 45(2) of the Act sets out how a tenant may end a fixed term tenancy:

*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.*

The above provision states that the tenants cannot give notice to end the tenancy before the end of the fixed term. If they do, they may have to pay for rental losses to the landlords.

In this case, the tenants ended the tenancy on June 30, 2020, prior to the end of the fixed term on December 31, 2020. I find that the tenants breached the fixed term tenancy agreement. As such, the landlords may be entitled to compensation for losses they incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

On a balance of probabilities and for the reasons stated below, I award the landlords \$700.00 for a loss of rent from July 1 to 14, 2020. Both parties agreed that the tenants did not provide any notice to vacate to the landlords and they breached the fixed term tenancy agreement. I accept the testimony of the landlord and landlord LD that the landlords were unable to re-rent the unit to new tenants until July 15, 2020. I find that this is a reasonable period of time to clean the rental unit, answer rental inquiries, show the unit and re-rent to new tenants. I find that the landlords made reasonable efforts to mitigate their losses.

The landlords continue to hold the tenants' security deposit of \$700.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' entire security deposit of \$700.00 in full satisfaction of the monetary award.

#### Tenants' Application

Section 38 of the *Act* requires the landlords to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlords are required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the deposit. However, this provision does not apply if the landlords have obtained the tenants' written authorization to retain all or a portion of the deposit to offset damages or losses

arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlords, which remains unpaid at the end of the tenancy (section 38(3)(b)).

I make the following findings on a balance of probabilities and the testimony of both parties. The tenancy ended on June 30, 2020. The tenants provided a written forwarding address to the landlords on July 7, 2020. The landlords did not return the full deposit to the tenants, but they made an application for dispute resolution to claim against the deposit on July 16, 2020, within 15 days of the later forwarding address date of July 7, 2020.

The landlords did not complete a move-out condition inspection report with the tenants, which extinguished their right to keep the deposit for any damages, as per Residential Tenancy Policy Guideline 17. The landlords did not apply for damages, they applied for a rent loss in their application, so I find that their right to retain the security deposit was not extinguished as to the rent.

As I found above, the landlords are entitled to retain the tenants' security deposit of \$700.00 towards rent loss. Accordingly, I find that the tenants are not entitled to a return of their security deposit of \$700.00 and this application is dismissed without leave to reapply. As the tenants were unsuccessful in their application, their claim to recover the \$100.00 filing fee is dismissed without leave to reapply.

### Conclusion

I order the landlords to retain the tenants' entire security deposit of \$700.00 in full satisfaction of the monetary award.

The tenants' entire application is dismissed 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: November 24, 2020

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Residential Tenancy Branch