



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCL-S, FFL

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The Landlord states that on September 19, 2020 the Parties viewed the unit over zoom, discussed and agreed to the terms of the tenancy. The Landlord states that it was agreed that the term would commence on October 1, 2020 for a one-year term and that the Tenants would pay \$1,800.00 as rent on the first day of each month plus \$60.00 for the utilities. The Landlord also states that the Tenants agreed to \$1,930.00 as monthly rent with utilities included. The Landlord states that the Tenants agreed to pay the security deposit of \$930.00. The Landlord also states that the Tenants agreed to pay a security deposit of \$950.00. The Landlord states that after this call and on the same date the Tenants sent the Landlord \$950.00 by e-transfer for the security deposit. The

Landlord states that he then sent the Tenants the written tenancy agreement for signature with the agreed upon terms contained in the written tenancy agreement. It is noted that the written tenancy agreement sets out the Landlord's address as at the rental address and that the monthly rent payable is set at \$1,930.00. The Landlord states that on September 20, 2020 the Tenants sent an email that they would not be occupying the unit with a request for the return of the security deposit to their forwarding address. The Landlord confirms that the Tenants never signed the written tenancy agreement.

The Tenants state that they did not agree to rent the unit when in the zoom call on September 19, 2020 but sent the security deposit of \$950.00 to hold the unit. The Tenants state that they did agree to rent the unit at the rental rate of \$1,900.00 with the rent to include utilities and internet. The Tenants state that the Landlord also told the Tenants that he did not live at the rental unit address but that his parents lived in the upper part of the rental address. The Tenants state that when they received the written tenancy agreement the rental term had changed to \$1,930.00 and the Landlord set out its address as the rental address. The Tenants state that at this point they decided to search the Landlord on the internet and discovered that the Landlord had been charged with a criminal offence involving female minors. The Tenants state that as they were young women, they became afraid and that they immediately informed the Landlord that they would not move into the unit.

The Landlord states that the Tenants never mentioned any issues with the rental terms in the written tenancy agreement and that there is no other relevant evidence from the Tenants requiring a response.

### Analysis

Section 20(a) of the Act provides that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

Section 1 of the Act defines "tenancy agreement" as an agreement, whether written or

oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. Section 26(1) of the Act provides that 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.

Given the Landlord's confusing evidence on the oral terms of the tenancy agreement made prior to the provision of the written tenancy agreement, I prefer the Tenant's evidence of those terms. Given the Tenant's testimony, supported by the copy of the tenancy agreement provided by the Landlord as evidence, I find that that the written agreement received after the oral agreement did not contain the agreed terms for the rental. Although the Tenant's paid a security deposit that reflected the agreed upon terms, as the written tenancy agreement was different and as the Tenants did not sign that agreement, I find that there was no effective agreement, that the security deposit could not have been required and that no rents were therefore payable by the Tenant. For these reasons I dismiss the claim for unpaid rent and order the Landlord to return the **\$950.00** to the Tenants forthwith. As the Landlord has not been successful with this claim I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

### Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$950.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: February 3, 2021

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Residential Tenancy Branch