



# Dispute Resolution Services

Page: 1

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 the security deposit (the deposit), pursuant to section 38;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, under section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. Tenant DR represents tenant LT. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

### Preliminary Issue – Application for a monetary order for compensation under section 67

The tenants' application for an order for the landlord to return the deposit states:

01 - I want my security deposit returned that the landlord is holding without cause  
\$1,929.52

Notice delivery date: Jun 7, 2020

Notice delivery method: Sent by registered mail

Applicant's dispute description

Half rent \$750 Security Deposit \$750 Equipment contract truck \$ 153.45 Fuel

Transaction \$ 123.22 Storage rent \$152.85

The landlord affirmed he is aware the tenants are applying for an order for the return of the deposit and for compensation under section 67 for the return of half month rent and moving expenses.

Per section 59(2)(c) of the Act, I accept the tenants' application for compensation under section 67 of the Act.

### Issues to be Decided

Are the tenants entitled to:

1. an order for the landlord to return the deposit?
2. an order for compensation for loss?
3. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the parties, 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 rule 7.4 to the parties; it is the tenants' obligation to present the evidence to substantiate their application.

Both parties agreed they signed a tenancy agreement for a fixed-term tenancy from May 15, 2020 to April 30, 2021, monthly rent was \$1,500.00 due on the first day of the month. At the outset of the tenancy the landlord collected a deposit in the amount of \$750.00. The landlord currently holds the deposit. A copy of the tenancy agreement was submitted into evidence.

The tenant affirmed he received the keys on May 13 or May 14, 2020, on May 16, 2020 the tenant informed the landlord he would not move in because the rental unit was uninhabitable. The tenant removed his belongings from the rental unit on May 24, 2020.

The landlord stated he constantly communicated with the tenant between May 15 and 30, 2020 about the rental unit's condition and the tenant had possession of the rental unit until May 31, 2020.

Both parties agreed when the tenancy started the rental unit was not clean, the kitchen was in poor condition, the bathroom had a broken tile, and the microwave and oven had food leftovers.

Photographs showing the rental unit's conditions when the tenancy started were submitted into evidence. The landlord said the rental unit was habitable when the tenant moved in, the landlord immediately offered to repair the bathroom and clean the rental unit. The repairs and cleaning were completed by May 30, 2020.

The landlord stated the tenant visited the rental unit before he signed the tenancy agreement and was aware it was in poor condition. The tenant affirmed he expected the rental unit to be in better conditions when the tenancy started. The tenant preferred to move out immediately because he lost trust in the landlord.

The tenant testified he served his forwarding address by registered mail on June 08, 2020 (the tracking number is on the cover page of this decision). The landlord said he may have received the tenants' forwarding address in June 2020.

The tenants did not authorize the landlord to retain their deposit. This application was filed on September 18, 2020.

The tenants paid rent in the amount of \$750.00 from May 15 to 31, 2020.

The tenants are claiming for the return of rent paid from May 15 to 30, 2020 in the amount of \$750.00 and moving-out expenses in the amount of \$429.52 for the rental of a moving truck, fuel for the moving truck and temporary storage.

### Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

#### Return of the deposit

I accept both parties uncontested testimony that the fixed-term tenancy original end date was April 30, 2021, the tenant vacated the rental unit early and the landlord had possession of the rental unit on May 31, 2020.

Section 44 of the Act states:

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

[...]

(d)the tenant vacates or abandons the rental unit;

Per section 44(1)(d) of the Act, the fixed-term tenancy ended on May 31, 2020, as the tenants had vacated the rental unit and the landlord had possession of the rental unit on that date.

Section 38 of the Act requires the landlord to either return the tenants' 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 tenants' forwarding address in writing.

The landlord has not brought an application for dispute resolution claiming against the security deposit, pursuant to section 38(1)(d) of the Act.

I accept the tenant's testimony and the tracking number provided that the tenant served the landlord his forwarding address in writing on June 08, 2020. Per section 90 (a) of the Act, the landlord is deemed served the tenants' forwarding address on June 13, 2020.

Under these circumstances and in accordance with section 38(6)(b) of the Act, the tenants are entitled to a monetary award of \$1,500.00 (original \$750.00 deposit doubled).

Over the period of this tenancy, no interest is payable on the landlord's retention of the security deposit.

#### Rent payment

Based on the photographs submitted into evidence, I find the tenants failed to prove, on a balance of probabilities, the rental unit was uninhabitable. The rental unit was not clean but it was habitable. The tenants could have occupied the rental unit between May 15 and 30, 2020.

Thus, I dismiss the tenants' claim for compensation for the return of rent payment from May 15 to 30, 2020.

#### Moving expenses

The tenants voluntarily moved out of the rental unit. The tenants moving expenses are not related to the landlord not complying with the Act.

Thus, I dismiss the tenants' application for a monetary award for moving expenses.

#### Filing fee and summary

As the tenants' application is partially successful, I award the tenants the return of the filing fee.

In summary, the tenants are entitled to:

Return double deposit of \$750.00	\$1,500.00
Filing fee	\$100.00
<b>Total</b>	<b>\$1,600.00</b>

### Conclusion

I grant the tenants a monetary order pursuant to sections 38 and 72 of the Act, in the amount of \$1,600.00.

This order must be served on the landlord by the tenants. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*.

Dated: February 24, 2021

---

Residential Tenancy Branch