



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNSD MNDCT FFT

### **Introduction**

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

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38;
- a monetary order for compensation for money owed or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenants' application for dispute resolution ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

### **Issues(s) to be Decided**

Are the tenants entitled to the return of their security deposit and related compensation under the *Act*?

Are the tenants entitled to a monetary order for compensation for monetary loss under the *Act*, regulation, or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

## **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began as a 1 year fixed-term tenancy on September 1, 2016, and continued on a month-to-month basis until December 31, 2018 when the tenants moved out. Monthly rent was set at \$1,900.00 at the beginning of the tenancy, payable on the first of the month. The landlord collected a security and pet damage deposit in the amounts of \$950.00 each deposit. The tenants were issued with a Notice of Rent Increase on October 11, 2017 increasing the rent by 4% as of February 1, 2018. The tenants paid the increased monthly rent of \$1,976.00 from February 1, 2018 until they moved out on October 31, 2018. Both parties confirmed that the tenants' pet damage deposit was applied to the October 2018 monthly rent, and that the landlord still holds the remaining \$950.00 security deposit. The tenants provided a copy of the move-out inspection report showing that they had provided the landlord with their forwarding address upon move-out.

The tenants filed this application requesting the following monetary orders:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$950.00
Compensation for Failing to Comply with Section 38	950.00
Return of Increased Rent (11 x \$76)	836.00
Rent Reduction of \$200.00/month x 16 months for removal of furniture	3,200.00
Loss of Quiet Enjoyment (1 month's rent)	1,900.00
Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$7,936.00</b>

The tenants testified that they did not give permission for the landlord to retain their security deposit, nor did the landlord file an application to retain any portion of their deposit.

The tenants testified that they did not think the rent increase imposed was reasonable, and that the rent should have decreased instead. The tenants requested the refund of

the additional \$76.00 per month paid, plus a rent reduction in the amount of \$200.00 per month for the 16 months that the landlord had removed the furniture from the rental unit. The tenants testified that the home was rented furnished to them, and the landlord had slowly removed the furniture without any compensation to them. The tenants also testified that the landlord would make frequent visits without proper notice, which disturbed their peace and quiet enjoyment of the home. The tenants submitted the text messages that show the correspondence between the parties and the landlord's frequent visits and requests.

The tenants testified that in addition to the removal of furniture and frequent visits and disturbances, the landlord had attempted to end the tenancy without giving proper notice. The tenants testified that the landlord had attempted to end the tenancy within the first year of the fixed-term tenancy, and then pretended to sell the home. The tenants testified that the landlord had conducted "fake showings with her friends and friends of friends every couple weeks during our busiest time of the year with business", which was disruptive to the tenants. The tenants testified that after informing the landlord of their obligations under the Act, the tenants were served with a Notice of Rent Increase. The tenants testified that they just paid it as they did not "need any more BS". The tenants decided to move out on December 31, 2018 because the tenants had sold their business. The tenants testified that they had waited to file their claim as they were out of the country for a year and a half, and due to stress in their lives.

The landlord confirmed that she did retain the security deposit, and that she provided the tenants with a statement showing the expenses that the deposit was to cover. The landlord denies that the home was rented furnished, and testified that that she had allowed the tenants to use the furniture on a temporary basis until they purchased their own. The landlord testified that the monthly rent did not include the furniture.

The landlord testified that she had given a proper Notice of Rent Increase, which was done in accordance with the Act. The landlord submitted a copy of the Notice in her evidentiary materials.

The landlord stated that she lived fourteen hours away, and would attend to occasionally pick up mail that was not forwarded to her. The landlord confirmed that she "would take a look around" because of complaints that she had received. The landlord testified that she had never entered the home without the tenant's permission, or without proper notice.

The landlord testified that she did list the home for sale, and that she had given ample notice when showing the home to the two people who had viewed it. The landlord testified she attempted to sell the home as she was having difficulty obtaining a mortgage for a new house, but was able to obtain financing to purchase a new home without selling this one.

The landlord does not dispute that she would message the tenant to pick up items.

### **Analysis**

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, I find that the landlord had not returned the tenants' security deposit in full within 15 days of receipt of the tenants' forwarding address in writing or move-out date. The landlord did not file an Application for Dispute Resolution to retain any portion of the deposit, nor did the landlord have written authorization at the end of the tenancy to retain any portion of the tenants' security deposit. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to the return of their original security deposit, plus a monetary award equivalent to the value of the deposit.

The tenants made additional monetary claims as listed in their application.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

#### ***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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this matter the tenants bear the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenants’ application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

The tenants testified that the home was rented to them furnished, while the landlord testified that she had only lent the furniture on a temporary basis until the tenants had purchased their own. The landlord does not dispute removing most of the items during the tenancy.

In review of the documents and testimony before me, I find that the furnishings were listed on a move-in inspection report that was not completed or signed by both parties. The tenants also submitted a copy of the written tenancy agreement dated August 6, 2016, which was signed by both parties. Under section 3 of the tenancy agreement, which shows the monthly rent payable, and what is included in the rent, several items were checked off as included services or facilities, including stove and oven, dishwasher, refrigerator, window coverings, and laundry. Although “furniture” is a listed item that could have been checked off, the box was not. In light of the disputed testimony before me, I find that the evidence supports the landlord’s testimony that the furnishings were provided on a temporary basis, and were not included in the monthly rent. I have considered the fact that the move-in inspection report does list the furnishings, but I find this report to be incomplete and unsigned by both parties. Furthermore, the primary purpose of the move-in inspection report is to document the condition of the home and furnishings. As noted above, when making a monetary claim, the burden of proof is on the applicants. Although I am satisfied that the furnishings were provided for use at the beginning of the tenancy, I am not satisfied that the tenants had provided sufficient evidence to support that the furnishings were included in the monthly rent. I accept the evidence of the landlord that the furnishings were lent to the tenants as a favour, and not provided to the tenants as part of the tenancy agreement. On this basis, I dismiss the tenants’ application for a retroactive rent reduction in the amount of \$200.00 per month without leave to reapply.

The tenants also requested the reversal of an imposed rent increase.

Sections 34 to 36 of the *Act* speaks to rent increases.

### ***Rent increases***

**34** *A landlord must not increase rent except in accordance with this Part.*

### ***Timing and notice of rent increases***

**35** (1) *A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

*(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the manufactured home site;*

*(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.*

*(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.*

*(3) A notice of a rent increase must be in the approved form.*

*(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.*

### **Amount of rent increase**

**36** *(1) A landlord may impose a rent increase only up to the amount*  
*(a) calculated in accordance with the regulations,*  
*(b) ordered by the director on an application under subsection (3), or*  
*(c) agreed to by the tenant in writing.*

*(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.*

*(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.*

*(4) [Repealed 2006-35-11.]*

*(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.*

I find that the increase imposed by the landlord meets the requirements as set out above. I am not satisfied that the tenants are entitled to a refund of the increase paid. On this basis, I dismiss the tenants' application for a refund of the increased rent without leave to reapply.

Lastly, the tenants applied for a monetary award of \$1,900.00 for the loss of their quiet enjoyment during this tenancy. I have considered the evidence and testimony before me, and although I find it is undisputed that the landlord or the landlord's family

members did make frequent requests, as shown in the text messages, I am not satisfied that these visits constitute a breach of the *Act* and tenancy agreement.

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenants' permission. The landlord's right to enter a rental unit is restricted, and the landlord must not enter unless:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

I am not satisfied that the landlord had contravened section 29 of the *Act* as set out above.

Section 28 states the following about the tenants' right to quiet enjoyment.

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

- (b) freedom from unreasonable disturbance;...



(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and while it was undisputed that the landlord may have disturbed the tenants with her requests, the onus still falls on the applicants to support their claim. In assessing this claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I have considered the testimony and evidence of both parties, and although I acknowledge the concerns raised by the tenants in regard to this tenancy, I find that the evidence presented by the tenants do not sufficiently support that the landlord's frequent requests were significant enough to justify the compensation requested. As stated above, the tenants bear the burden of proof in supporting the actual value of their loss, and that this loss stemmed directly from the other party's violation of the tenancy agreement of the *Act*. Although the tenants requested compensation, I find that they failed to support how the tenants had calculated the amount of loss claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damage or losses the tenants are seeking in this application. On this basis I dismiss the tenants' monetary claim for loss of quiet enjoyment without leave to reapply.

The tenants requested the recovery of the \$100.00 filing fee for this application. The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were only partially successful with their application, I allow them to recover half of the filing fee for this application.

### **Conclusion**

I issue a Monetary Order in the tenants' favour in the amount of \$1,950.00 for recovery of half of the filing fee, the return of their security deposit, plus an monetary award for the landlord's failure to comply with section 38 of the *Act*.

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portions of the tenants' application are 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: March 2, 2021

---

Residential Tenancy Branch