



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord: MNDCL-S, FFL  
Tenant: MNDCT, MNSD, FFT

### **Introduction**

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

- a Monetary Order for the return of the security deposit, pursuant to section 38;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- a Monetary Order for damages, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:43 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 p.m. Tenant T.H. attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that tenant T.H. and I were the only ones who had called into this teleconference.

Tenant T.H. confirmed his email address for service of this decision and order.

Tenant T.H. testified that the landlord was served with this application for dispute resolution and evidence via registered mail on October 1, 2021. A Canada Post registered mail receipt stating same was entered into evidence. I find that the landlord was deemed served with this application for dispute resolution and evidence on October 6, 2021, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the landlord, I order the landlord's application dismissed without liberty to reapply.

### **Issues to be Decided**

1. Are the tenants entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Are the tenants entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
3. Are the tenants entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### **Background and Evidence**

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

Tenant T.H. provided the following undisputed testimony. This tenancy began on November 1, 2020, with a different landlord ("landlord A") than listed in this application for dispute resolution. Landlord A sold the subject rental property to the landlord listed

on this application for dispute resolution (the “landlord”), and the sale closed on March 6, 2021. Under the tenancy agreement with landlord A, rent in the amount of \$1,600.00, was due on the first day of every month. When the landlord took over the tenancy, he expressed unhappiness with the amount of rent paid by the tenants and imposed a rent increase in the amount of \$100.00 per month.

Tenant T.H. provided the following undisputed testimony. The tenants did not know that a rent freeze was in place and that they were not required to pay the increased rent. The tenants paid the rent increase for April and May 2021. The tenants moved out of the subject rental property on May 31, 2021. The tenants are seeking to recover the \$200.00 overpayment of rent for April and May 2021. The tenants did not sign a new tenancy agreement with the landlord. The tenancy agreement entered into evidence by the tenants’ states that rent in the amount of \$1,600.00 was payable to landlord A on the first day of each month.

Tenant T.H. provided the following undisputed testimony. The tenants paid landlord A a security deposit of \$800.00. When landlord A sold the subject rental property to the landlord, landlord A returned the \$800.00 security deposit to the tenants. The tenants then paid the landlord a security deposit of \$850.00. The landlord has not returned any portion of the security deposit to the tenants. The tenants emailed the landlord their forwarding address on July 5, 2021. The tenants entered into evidence a read receipt stating that the email was read on July 6, 2021. The tenant entered into evidence a text message from the landlord dated July 6, 2021, confirming receipt of the tenants’ forwarding address. The landlord has not returned any portion of their security deposit. The tenants did not authorize the landlord to retain any portion of their deposit. The tenants entered into evidence bank records showing the \$850.00 security deposit paid to the landlord and the rent payments of \$1,700.00 made to the landlord for April and May 2021.

Tenant T.H. testified that at the end of the tenancy the landlords did not ask the tenants to complete a move out condition inspection report and did not provide them with a copy of a move out condition inspection report. Tenant T.H. testified that the landlord did not serve the tenants with a written final opportunity for inspection.

## **Analysis**

### **Rent Increase**

Based on tenant T.H.'s undisputed testimony, the tenancy agreement between the tenants and landlord A and the tenants' bank records, I find that the landlord imposed a rent increase in the amount of \$100.00 effective April 1, 2021 and that the tenants paid \$1,700.00 per month in rent for the months of April and May 2021.

Section 43(1) of the *Act* states:

- 43** (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.

Section 43.1(2) of the *Act* states:

- (2)A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice
- (a)is received before September 30, 2021, as determined under subsection (1) of this section, and
  - (b)has an effective date that is after March 30, 2020 and before January 1, 2022.

Section 43(5) of the *Act* states:

- (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.

Pursuant to section 43.1(2) of the *Act*, I find that the rent increase effective April 1, 2021, in the amount of \$100.00 per month is of no force or effect. The landlord inherited the tenancy agreement signed by landlord A and is bound by its terms, including the rental rate. Pursuant to section 43.1(2) of the *Act*, the landlord was not permitted to

raise the rent in April 2021. Pursuant to section 43(5) of the *Act*, I award the tenants \$200.00 for overpayment of rent from April to May 2021.

### Security Deposit

Sections 35 and 36 of the *Act* state that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not complete a condition inspection report in accordance with the regulations and provide the tenant a copy of that report in accordance with the regulations.

Tenant T.H. testified that no move out inspection report was completed. Responsibility for completing the move out inspection report rests with the landlord. I find that the landlord did not complete the condition inspection report in accordance with the Regulations, contrary to sections 35 and 36 of the *Act*.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-out inspection and inspection report, I find that pursuant to section 36(2) of the *Act*, the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

Based on tenant T.H.'s undisputed testimony, the July 6, 2021 read receipt and the landlord's July 6, 2021 text message confirming receipt of the tenants' forwarding address, I find that the landlord was sufficiently served, for the purposes of this *Act*, pursuant to section 71 of the *Act*, with the tenants' forwarding address on July 6, 2021.

Section 38 of the *Act* requires the landlord 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 landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

**Section C(3) of Policy Guideline 17 (PG#17) states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of**

**double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.**

Based on the undisputed testimony of tenant T.H. and the bank records entered into evidence, I find that the tenants paid the landlord a security deposit of \$850.00. I accept tenant T.H.'s undisputed testimony that none of that deposit has been returned.

In this case, while the landlord made an application to retain the tenants' security deposit within 15 days of receiving the tenants' forwarding address in writing, he is not entitled to claim against it due to the extinguishment provisions in section 36 of the *Act*. Therefore, pursuant to PG #17, the tenants are entitled to receive double their security deposit in the amount of \$1,700.00.

As the tenants were successful in this application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenants in the amount of \$2,000.00.

The tenants are provided with this Order in the above terms and the landlord must be served with 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.

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 04, 2022

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Residential Tenancy Branch