



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

File #310053377: MNDCL-S, FFL  
File #310052218: MNSDB-DR, FFT

### Introduction

The Landlord seeks an order for monetary compensation pursuant to s. 67 of the *Residential Tenancy Act* (the “*Act*”), claiming against a security deposit. The Landlord also seeks return of their filing fee pursuant to s. 72.

The Tenants’ cross-apply for the return of their security deposit pursuant to s. 38 of the *Act* and for the return of their filing fee pursuant to s. 72 as well.

R.D. and D.B. appeared as Landlords. The Tenants did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants failed to attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlords affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlords confirmed that they were not recording the hearing.

The Landlords advise that their Notice of Dispute Resolution and evidence were served on the Tenants by way of registered mail sent to their forwarding address on November 4, 2021. I find that the Landlords served the Tenants with their application materials in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants’ received the Landlords’ application materials on November 9, 2021.

Preliminary Issue – Dismissal of Tenants' claim

The Landlords deny receiving the Tenants' application materials. Pursuant to Rule 3.5 of the Rules of Procedure, an applicant must demonstrate that their application was served. As the Tenants failed to attend the hearing, they failed to do so under the circumstances.

Further, as applicants for their cross-application, the Tenants bear the onus of providing their claim on a balance of probabilities as per Rule 6.6 of the Rules of Procedure. The Tenants failed to attend the hearing to advance their claim or present their evidence. I find that the Tenants failed to prove their claim as required by the Rules of Procedure.

Accordingly, the Tenants' application is dismissed without leave to reapply.

Issue(s) to be Decided

- 1) Are the Landlords entitled to claim against the security deposit?
- 2) Are the Landlords entitled to an order for monetary compensation?
- 3) Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The Landlords confirmed the following details with respect to the tenancy:

- The tenancy began on January 1, 2021.
- Rent of \$1,900.00 was due on the first day of each month.
- The tenancy was for a fixed term ending on January 1, 2022, continuing month to month thereafter.
- The tenants vacated the rental unit on October 1, 2021.

A written tenancy agreement was put into evidence showing that a security deposit of \$950.00 and a pet damage deposit of \$950.00 are held by the Landlords in trust for the Tenants.

The Landlords indicate that the Tenants gave them notice that they would be vacating the rental unit in an email dated September 17, 2021. A copy of the email was put into evidence by the Landlords. Again, the Tenants left the rental unit on October 1, 2021. The Landlords say that rent for October 2021 was not paid by the Tenants.

The Landlords indicate a move-in inspection for the rental unit was completed on January 1, 2021. A move-out inspection was arranged with the Tenants and the Landlords' property manager on October 1, 2021. However, the Tenants had not vacated the rental unit at the time arranged by the parties on October 1, 2021.

The Landlords say they attempted to arrange other times to meet with the Tenants to conduct the move-out inspection. However, the parties were never able to arrange a time that worked and eventually the move-out inspection was conducted without the Tenants.

The Landlords confirm receiving the Tenants forwarding address by way of email dated October 14, 2021.

The Landlords claim one month's rent in compensation for the early termination of the tenancy. The Landlords' evidence includes a Kijiji ad for the rental unit and the Landlords say that the rental unit was not re-rented until February 1, 2022.

### Analysis

The Landlord's claim against the security deposit for monetary compensation.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

Under the circumstances, the later of the two dates under s. 38(1) is October 14, 2021, which is the day the Tenants provided the Landlords their forwarding address. Taking Rule 2.6 of the Rules of Procedure into account, the Landlords filed their application on October 29, 2021, which is within the 15-day window permitted to them under s. 38(1) of the *Act*.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

I am satisfied under the circumstances that the Tenants breached the 1-year term of their tenancy agreement by leaving the rental unit before the end of the term on January 1, 2022. Further, I note that s. 45 of the *Act* requires a tenant to give a landlord at least one-month's notice to end the tenancy and in the event of a fixed-term tenancy, such as here, not earlier than the date set out as the end of the tenancy in the tenancy agreement.

I find that the Tenants breached the tenancy agreement and s. 45 of the *Act*. I accept the Landlords' evidence that the Tenants did not pay rent on October 1, 2021 and that the rental unit was not re-rented until February 1, 2022. I find that the Landlords suffered a monetary loss due to the Tenants early end to the tenancy and am satisfied that a claim of \$1,900.00 is appropriate under the circumstances. The Landlords could not have mitigated their damages as the Tenants vacated the rental unit with little notice two-weeks before rent was due on October 1, 2021.

I find that the Landlords established their claim of \$1,900.00. I direct that the Landlords retain the security deposit and pet damage deposit, which are \$950.00 each, in full satisfaction of the amount owed by the Tenants.

Conclusion

The Tenants application is dismissed without leave to reapply.

The Landlords have established a monetary claim in the amount of \$1,900.00. Pursuant to s. 72(2) of the *Act*, I direct that the Landlords retain the security deposit of \$950.00 and the pet damage deposit of \$950.00 in full satisfaction of the amount owed to them by the Tenants.

As the Landlords were successful in their application, they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenants pay **\$100.00** to the Landlords for their filing fee.

It is the Landlords obligation to serve this order on the Tenants. If the Tenants do not comply with the monetary portion of this order, it may be filed with 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 22, 2022

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Residential Tenancy Branch