



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LL: **MNDCL-S, MNRL-S, FFL**  
                                 TT: **MNDCT, MNSD, FFT**

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain the deposits for the tenancy pursuant to section 38; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- a monetary order for damage or loss pursuant to section 67;
- authorization to obtain a return of the deposits pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenants attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they each testified that they were not making any recordings.

The tenants testified that they served the landlord with the notice of hearing and evidence by email sent to the address for service provided by the landlord. The tenants provided a copy of the email correspondence sent on September 17, 2021 as evidence of service. Based on the undisputed evidence I find the landlord deemed served with the tenants' application and materials on September 20, 2021, three days after emailing in accordance with sections 88, 89 and 90 of the *Act* and Regulation 44.

### Issue(s) to be Decided

Is the landlord entitled to any of the relief sought?

Are the tenants entitled to a monetary award? Are the tenants entitled to recover the deposits for this tenancy? Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenants gave undisputed evidence on the following facts. This fixed-term tenancy began in January 2021. Monthly rent was \$1,500.00 payable on the 15<sup>th</sup> of each month. A security deposit of \$750.00 and pet damage deposit of \$750.00 were collected at the start of the tenancy and are still held by the landlord.

No condition inspection report was prepared for this tenancy. While a copy of an inspection report form with some handwritten notes was submitted into evidence by the tenants, it is unsigned by either party.

The tenancy ended on August 31, 2021. The tenants gave their forwarding address in writing on September 1, 2021. The tenants did not authorize the landlord to retain any portion of the deposits for this tenancy.

The tenants submit that the rental unit was deemed an illegal suite by the municipality, and they vacated by August 31, 2021. The tenants seek a monetary award for moving costs and the higher rent they are now paying at a different address.

## Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – 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 reapply.

As the landlord did not attend this hearing to pursue their application, I dismiss the landlord's claim in its entirety without leave to reapply.

Section 38 of the *Act* requires the landlord to either return the tenant's 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 tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

In the present case, I accept the undisputed evidence of the tenants that this tenancy ended on August 31, 2021 and the tenants gave the landlord the forwarding address in writing on September 1, 2021. The landlord filed their application for authorization to retain the deposits on September 16, 2021, within the timeline provided under the *Act*.

I find that the tenants are entitled to a return of the security and pet damage deposit for this tenancy. I accept the undisputed evidence of the tenants that they have not authorized the landlord to retain any portion of the deposits. Therefore, I issue a monetary award in the tenants' favour in the amount of \$1,500.00, the return of the full value of the security and pet damage deposit for this tenancy.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the amounts claimed by the tenant for moving costs and the difference in the monthly rent paid at their new residence are not losses arising due to the breach on the part of the landlord but simply the expected costs of moving and commencing a new tenancy. I find these costs are not recoverable under the Act and consequently dismiss this portion of the claim.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord.

### Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the tenants' favour in the amount of \$1,600.00. 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: March 17, 2022

---

Residential Tenancy Branch