



# Dispute Resolution Services

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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 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.

While the tenant DP attended the hearing by way of conference call, the landlord did not. I waited until 1:58 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant 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. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided sworn, undisputed testimony that the landlord was served with the tenants' application for dispute resolution and evidence package on September 23, 2021, and the tenants' amendment on March 24, 2022. The tenant provided the tracking information in the hearing for both packages. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord deemed served with the tenants' application, evidence, and amendment, 5 days after mailing.

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

Are the tenants entitled to the return of their security deposit?

Are the tenants entitled to the monetary order requested?

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 tenant provided the following testimony. The tenants and landlord entered into a verbal agreement on February 11, 2020 for a tenancy to begin on April 1, 2020. At that time, the tenants paid the landlord a security deposit of \$825.00, which the landlord still holds. A dispute took place between the parties over a non-functioning furnace, and on March 30, 2020, the day before the move-in, the landlord informed the tenants that they won't be given possession of the rental unit. The tenants sent a message on April 1, 2020 to obtain the keys, and the landlord did not respond. The tenants discovered a new advertisement for rent by the landlord in an attempt to re-rent the rental unit.

On April 1, 2020 the tenants filed an application for an Order of Possession of the rental unit, which was granted on April 16, 2020 by the Arbitrator after a hearing was held on April 14, 2020.

Despite being granted the Order of Possession, the tenants were not provided possession of the rented unit. The landlord also did not return the security deposit to the tenants despite their provision of their forwarding address on June 28, 2021. The tenants are seeking the return of their security deposit, as well as compensation for the losses associated with the landlord's failure to comply with the tenancy agreement.

The tenants are requesting the following monetary orders:

<b>Item</b>	<b>Amount</b>
Self Storage	\$6,016.50
Credit card interest for self storage	1,200.00
Rent difference-June 15, 2020 to current	3,300.00
Rent receipt-temporary rental	2,000.00
Rent receipt-temporary rental	2,000.00
Future storage-3 years	10,395.00

Future rent difference	5,400.00
Future interest	2,079.00
Return of security deposit	825.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$33,315.50</b>

The tenants testified that the landlord did not return their security deposit, nor did the landlord file an application to keep it. The tenants provided their forwarding address by email on June 28, 2021.

The tenants testified that they had difficulty finding housing considering the lack of notice, and as a result had to find housing in a different city for \$1,800.00 per month. The tenants testified that the new rental they found was not as large, and the tenants had to pay for storage for their belongings. The tenants submitted a claim for the storage costs, as well as interest on their credit card. The tenants are also seeking the differential in rent. The tenants submit that the term was at least 5 years as this was the preference of the landlord as noted in their conversations and on the rental posting. The tenants are also seeking reimbursement of the temporary accommodations due to the landlord's failure to continue with the tenancy agreement, and grant possession after the tenants obtained an Order of Possession.

### **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. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

I am satisfied that the tenants had provided the landlord with a security deposit in the amount of \$825.00. I am satisfied that the tenants had provided their forwarding

address to the landlord in writing. I find it undisputed that the landlord had failed to return the deposit within 15 days of the provision of the forwarding address. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenants' security deposit. The tenant gave sworn testimony that the landlord had not obtained their written authorization at the end of the tenancy to retain any portion of the deposit. In accordance with section 38 of the *Act*, I find that the tenants are therefore entitled to a monetary order for the return of their deposit, plus compensation equivalent to the value of this deposit.

I will now consider the tenants' claims for losses.

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.

The tenants were granted an Order of Possession by an Arbitrator on April 16, 2020 after the landlord had failed to provide possession on April 1, 2020 as agreed upon. The rent was set at \$1,650.00 per month. I find it undisputed that despite being provided with this Order of Possession, the tenants were unable to move into the rental unit. As a result of the landlord's noncompliance with the original agreement and Order of Possession, the tenants suffered monetary losses.

In assessing these losses, as noted above, the burden falls on the tenants not only to support the value of their claims, but that these losses were due to the landlord's failure to comply with an Order or the Act. Furthermore, the burden is on the tenants to mitigate their losses.

Although the tenants argue that the term of this tenancy was five years, I am not satisfied that this term is supported in evidence. Although the landlord did make reference to a preference for a longer term as their previous tenants had resided there five years, I am not satisfied that the tenants had provided sufficient evidence to support that this was a fixed-term tenancy, and for five years. For these reasons, I will assess the losses based on a periodic tenancy agreement.

I am satisfied that the tenants were not provided sufficient notice, nor a reasonable explanation for why the landlord refused to allow the tenants to move in. I am satisfied that they were not provided sufficient time to find alternative housing, and as a result the tenants had to find temporary housing until they could find a new place to rent. I am satisfied that the tenants supported these losses in the amount of \$2,000.00 per tenant for April 1, 2020 through to June 15, 2020. I accept the testimony and submissions of the tenants that they struggled to find suitable accommodation, and that these losses were unavoidable. Accordingly, I allow the tenants a monetary order of \$4,000.00 for this period.

The tenants are also seeking reimbursement of storage costs as the new rental was not only more expensive, but lacked the storage space the landlord's rental had. I find that the tenants provided evidence to support that they had paid \$252.00 per month in storage. As noted above, the burden is on the applicants to support their claims. The tenants also have the duty to mitigate their losses. Although I find the evidence does support that the tenants had paid for monthly storage, I am not satisfied that these

losses are directly associated with the landlord's failure to provide possession of the rental unit. Although the tenants provided testimony of how the new rental was much smaller than the home and property they were to rent from the landlord, I find that the tenants failed to provide detailed evidence of what specific items had to be stored due to this change. Accordingly, I dismiss the tenants' claims for storage costs without leave to reapply. I also dismiss the tenants' claims for interest on these claims.

The tenants also filed claims for the rent differential from June 15, 2020 onwards. Although I am sympathetic towards the fact that the tenants had to find new housing, as noted above, I am not satisfied that the parties had entered into a fixed-term tenancy. As noted above, the applicants must prove that they took reasonable steps to mitigate or minimize the losses claimed. In this case, I am not satisfied that the tenants had provided sufficient evidence to support the ongoing rent differential claimed. I dismiss this portion of the tenants' claim without leave to reapply.

Lastly, the tenants applied for future losses. As the *Act* only allows an applicant to recover losses suffered, I dismiss these claims without leave to reapply.

I allow the tenants to recover the filing fee for this application.

### **Conclusion**

I issue a monetary order in the amount of \$5,750.00 in the tenants' favour as set out in the table below.

<b>Item</b>	<b>Amount</b>
Rent receipt-temporary rental	2,000.00
Rent receipt-temporary rental	2,000.00
Return of security deposit	825.00
Compensation for failure to return security deposit	825.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order</b>	<b>\$5,750.50</b>

The landlord(s) must be served with this Order as soon as possible. Should the landlord(s) 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: May 18, 2022