



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EWALD RENTALS  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **LL: MNDCL-S, MNDL-S, FFL**  
                                 **TT: MNSDS-DR, 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 all or a portion of the tenant’s security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; 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 an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch’s objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

Issue(s) to be Decided

Is either party entitled to the relief sought?

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 parties agree on the following facts. The rental unit is a suite in a multi-unit building and was initially occupied by two occupants in February 2017. The occupants were not either of the named tenants for this application. A copy of the tenancy agreement signed by the landlord and the two original occupants was submitted into documentary evidence. The monthly rent shown on the tenancy agreement is \$1,295.00 payable on the first of each month. The landlord collected a security deposit of \$650.00 from the original occupants and testified that they still hold that amount. The landlord submits that they conducted a move-in inspection and prepared a condition inspection report with the original occupants, a copy of which was submitted into evidence.

The landlord submits that over the successive years the original tenancy agreement continued with amendments when new co-tenants moved in or others moved out of the rental unit. The landlord submitted into documentary evidence the tenancy agreements which include:

1. The original tenancy agreement of February 5, 2017 listing SG and SV as the tenants
2. A tenancy agreement dated September 28, 2017 which lists SV as the sole tenant
3. A tenancy agreement dated November 1, 2019 which lists SG and the named tenant EM as the tenants and provides a monthly rent of \$1,459.00
4. An agreement dated November 2020 which lists the two named tenants EM and MS as the tenants and provides a monthly rent of \$1,595.00

The landlord submits that no new inspection was conducted and that no new deposit was collected when there was a change in the occupants of the rental unit. The tenants confirmed that they have not paid a security deposit for this tenancy in 2020 and the only deposit they are aware of is the initial \$650.00 amount paid in 2017.

The parties agree that the tenants gave written notice to end the tenancy on October 5, 2021 and the tenancy ended on October 31, 2021. The parties agree that no move-out inspection was offered, scheduled, or conducted and no move-out inspection report was prepared. The parties agree that the tenants provided their forwarding address in writing on November 24, 2021. The tenants have not given written authorization that the landlord may retain any portion of the deposit for this tenancy. Both parties filed their respective application for dispute resolution on December 20, 2021.

### Analysis

Residential Tenancy Policy Guideline 12 outlines the rights and responsibilities of co-tenants and occupants and provides in relevant parts that parties may amend a tenancy agreement to add new parties or remove vacating co-tenants without ending the original tenancy agreement.

I am satisfied with the undisputed submission of the parties that the present tenancy began in 2017 when the original occupants took possession of the rental unit and paid the security deposit of \$650.00. I accept the undisputed evidence that the parties chose to amend the existing tenancy agreement and add the present tenants while removing earlier occupants. I find the actions of the parties consistent with a continuing tenancy with no new inspection conducted when new occupants move into the rental unit and no new deposits required.

Based on the undisputed evidence of the parties I am satisfied that this periodic tenancy began in 2017 when the landlord prepared a condition inspection report with the original occupants and a security deposit of \$650.00 was collected.

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 the parties agree that the tenants provided a forwarding address in writing on November 24, 2021. The landlord filed their application for dispute resolution on December 20, 2021, outside of the 15 days provided under the *Act*.

I further note that the parties gave evidence that no condition inspection report was prepared at the end of this tenancy. I accept the undisputed evidence of the parties that the landlord did not offer, schedule or conduct a move-out inspection and . Pursuant to section 36(2) of the *Act* I therefore find that the landlord has extinguished their right to claim against the deposit for this tenancy for damage to the residential property.

Based on the undisputed evidence before me, I find that the landlord has failed to return the tenants' security deposit in full within the 15 days of receiving a forwarding address nor have they applied to retain the security deposit within the timeframe provided under section 38(1)(c) of the *Act*. I accept the tenants' evidence that they have not waived their right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlord's failure to abide by the provisions of that section of the *Act*.

Under these circumstances and in accordance with section 38(6) of the *Act*, I find that the tenants are entitled to a \$1,300.00 Monetary Order, double the value of the \$650.00 security deposit for this tenancy. No interest is payable over this period.

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.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord 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."

Section 45(1) of the Act provides that a tenant may end a periodic tenancy by giving notice on a day no earlier than one month after the date the landlord receives the notice and is the day before the day in the month when rent is payable under the tenancy agreement.

In the present case the parties agree that the tenants gave notice to end the tenancy on October 5, 2021 and vacated by October 31, 2021 without paying rent on November 1, 2021. As notice was issued on October 5, 2021 the effective date would have been November 30, 2021 and the tenants remained obligated to pay rent on November 1, 2021 in the amount of \$1,595.00 pursuant to the tenancy agreement.

However, I find little evidence of the steps that the landlord took in seeking a new occupant to mitigate any rental income losses. The landlord submits that they were unable to find a new occupant for the rental unit until sometime in 2022. The landlord provided little cogent evidence of the steps they took, where they advertised the suite, whether they interviewed prospective occupants or took any measures to find a new occupant. I find it unreasonable that given the ongoing rental housing crisis in the province the landlord was unable to find a new occupant for the rental unit for over eight weeks after the tenants had vacated.

Based on the evidence, while I find that the tenants breached the Act by failing to provide notice pursuant to the Act, I find that the landlord has failed to demonstrate that any losses incurred are a result of the breach rather than the landlord's own failure to take reasonable steps to mitigate any losses. Consequently, I decline to issue an award to the landlord for any loss of rent or rental income losses.

I find insufficient evidence in support of the landlord's claim for damages and loss to the rental suite. I find the few photographs and receipts they have submitted into documentary evidence to be insufficient to establish that there has been any damage to the rental unit beyond what would be expected wear from occupation and the age of the rental unit. Taken either individually and cumulatively I find the landlord has failed to demonstrate on a balance of probabilities that there has been any damage or loss attributable to a breach on the part of the tenants. Accordingly, I dismiss the landlord's application.

As the tenants were successful in their application they are entitled to recover their 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 tenant's favour in the amount of \$1,400.00, representing double the security deposit for this tenancy and the filing fee. 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: July 25, 2022

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Residential Tenancy Branch