



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order for the landlord to return the security and pet damage deposits, under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

This hearing was originally convened on August 23, 2022. This decision should be read in conjunction with the interim decision dated August 24, 2022.

Tenants JL, ML (the tenant) and MI and landlord AG (the landlord) attended the hearing on January 09, 2023. The tenant represented tenants JE and JA. The landlord represented landlord JG. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

### Issues to be Decided

Are the tenants entitled to:

- an order for the landlord to return the security and pet damage deposits?
- an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed they signed a tenancy agreement on August 23, 2021 for a fixed-term tenancy from October 01, 2021 to May 31, 2022. Monthly rent of \$3,500.00 was due on the first day of the month. The landlord collected a security deposit in the amount of \$1,750.00 and a pet deposit in the amount of \$500.00. The landlord currently holds in trust the security and pet damage deposits (the deposits) in the amount of \$2,250.00.

The tenancy agreement was submitted into evidence.

Both parties agreed that on September 07, 2021 the tenants verbally informed the landlord that they will not move to the rental unit.

The tenant offered the landlord to retain a part of the deposits on September 07, 2021 as compensation because the tenants decided not to move to the rental unit, but the parties did not agree to a specific amount. The landlord affirmed that she decided it was not fair to return any amount of the deposits, as the landlords could not re-rent the rental unit and incurred financial losses.

The tenant did not provide her forwarding address to the landlord.

The landlord listed the unit for sale on September 16, 2021 and sold it on January 04, 2022. The landlord did not receive rental income during this period.

The tenants submitted this application on January 13, 2022.

Both parties confirmed their current addresses for service. The addresses are recorded on the cover page of this decision.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 16 of the Act states:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Based on the tenant's testimony and the tenancy agreement, I find although the tenants did not occupy the rental unit a tenancy commenced when the tenancy agreement was created.

Sections 44 and 45 of the Act state:

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [tenant's notice];

(i.1)section 45.1 [tenant's notice: family violence or long-term care];

(ii)section 46 [landlord's notice: non-payment of rent];

(iii)section 47 [landlord's notice: cause];

(iv)section 48 [landlord's notice: end of employment];

(v)section 49 [landlord's notice: landlord's use of property];

(vi)section 49.1 [landlord's notice: tenant ceases to qualify];

(vii)section 50 [tenant may end tenancy early];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

(d)the tenant vacates or abandons the rental unit;

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

[...]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

#### Tenant's notice

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

I accepted the undisputed testimony that the parties entered into a fixed-term tenancy agreement from October 01, 2021 to May 31, 2022, the tenants informed the landlord on September 07, 2021 that they would not occupy the rental unit, the landlord listed the rental unit for sale on September 16, 2021 and the tenants submitted this application on January 13, 2022.

Per section 44(1)(f) of the Act, the tenancy ended on September 16, 2021, as the landlord was aware on September 07, 2021 that the tenants would not move to the rental unit and listed the rental unit for sale on September 16, 2021.

The tenancy agreement does not indicate the parties' address for service.

Section 13(2)(e) of the Act requires a tenancy agreement to include the landlord's address for service.

I find the landlord failed to comply with section 13(2)(e) of the Act, as the landlord did not provide an address for service.

I adjourned the August 23, 2022 hearing because the landlord affirmed that she did not provide her address for service and the tenants could not serve the notice of hearing. On August 23, 2022 both parties confirmed their email addresses and agreed to receive documents via email.

Section 38(1) of the Act states:

Except as provided in subsection (3) or (4) (a), within 15 days after the later of  
(a) the date the tenancy ends, and  
(b) the date the landlord receives the tenant's forwarding address in writing,  
the landlord must do one of the following:  
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;  
(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Per section 39 of the Act, the tenant must provide the forwarding address in writing to the landlord within one year after the end of the tenancy.

However, the tenants could not provide their forwarding address to the landlord until August 23, 2022, as the landlord breached section 13(2)(e) of the Act by not providing an address for service of the tenants' forwarding address in writing. The tenants learned that the landlord could be served the forwarding address in writing via email on August 23, 2022.

As such, I find the tenants' timeframe to provide their forwarding address in writing started on August 23, 2022.

Both parties confirmed their current address for service on January 09, 2022. Per section 71(2)(b) of the Act, I order that the tenants' forwarding address and the landlord's current address for service are sufficiently served five calendar days after the date of this decision.

As the tenants confirmed they did not serve their forwarding address in writing, the tenants are not entitled to an order for the return of the deposits, per section 38(1) of the Act.

I dismiss the tenants' claim with leave to reapply. The landlord is advised to address the deposits in accordance with section 38 of the Act. However, if the landlord does not comply with the Act, the tenants have leave to reapply for return of their security deposit.

The tenants must bear the cost of the filing fee, as the tenants were not successful.

### Conclusion

I dismiss the tenants' claim with leave to reapply.

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: January 18, 2023

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Residential Tenancy Branch