



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCL-S, FFL  
                              MNSDS-DR, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution that was filed by the Landlords (the Landlords' Application) under the *Residential Tenancy Act* (the Act) on July 13, 2022, seeking:

- Compensation for monetary loss or other money owed;
- Retention of the Tenants' security deposit; and
- Recovery of the filing fee.

This hearing dealt with a Cross-Application for Dispute Resolution that was filed by the Tenants (the Tenants' Application) under the Act on August 24, 2022, seeking:

- The return of their security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 pm on April 4, 2023, and was attended by the Tenants and an agent for the Landlords ZH (Agent), all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another, and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that recordings of the proceedings are prohibited and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that respondents must be served with a copy of the Application and Notice of Hearing. The Agent testified that the Notice of Dispute Resolution Proceeding (NODRP), which includes a copy of the Application and the Notice of Hearing, was sent to each of the Tenants by registered mail on July 27, 2022, one day after it was made available to them by the Residential Tenancy Branch (the Branch). The Agent also provided the registered mail tracking numbers, which I have recorded on the cover page of this decision. The Agent stated that the registered mail packages were delivered and signed by a person with the initials HS, which matches the initials for one of the respondents.

The Tenants denied receipt and alleged that the package was perhaps delivered to a property with the same street address and a similar street name a few blocks over, as mail is often misdelivered between them in error by the post office. With the consent of the parties, I used the Canada Post online tracking system and verified that the mail was delivered on July 27, 2022, and signed for by a person with the initials HS. I also note that the correct postal code for the Tenants' service address was used, which is different from the postal code for the other address suggested by the Tenants, and that I had to use the Tenants' correct postal code to access the delivery confirmation.

Although the Tenants suggested that both registered mail packages were erroneously delivered to a different but similar address and coincidentally signed for and received by a person with the same initials as one of them, no evidence was submitted in support of this argument. Further to this, I find it extremely unlikely that someone would accept and sign for two separate registered mail packages address to other people and a different address, and that the person who signed for these packages would happen to have, as a matter of pure coincidence, the same initials as one of the respondents. As a result, I dismiss this argument as without merit and find that the Tenants were more likely than not, served with the Landlords; NODRP by registered mail on July 27, 2022.

The Agent acknowledged receipt of the Tenants' NODRP on behalf of the Landlords by registered mail on November 4, 2022, and raised no concerns with regards to the service date or method. As a result, the hearing of both Applications proceeded as scheduled. As the parties acknowledged receipt of each other's documentary evidence, and raised no concerns with regards to service dates or methods, I accepted the documentary evidence before me from the parties for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided.

#### Issue(s) to be Decided

Are the Landlords entitled to compensation for monetary loss or other money owed?

Are the Landlords entitled to retention of the security deposit?

If not, are the Tenants entitled to its return, or double its amount?

Are any of the parties entitled to recovery of the filing fee?

#### Background and Evidence

The parties agreed that the tenancy agreement in the documentary evidence before me is correct, and that the Tenants paid a \$1,000.00 security deposit, which the Landlords still holds in trust. They also agreed that move-in and move-out condition inspections were completed and that none of the reasons set out under section 38(3) or (4) of the Act apply with regards to the Landlords' withholding of the security deposit.

The dispute relates to a disagreement between the parties about whether the tenancy was ended by the Tenants or the Landlords, and therefore whether the Landlords are entitled to recovery of liquidated damages as set out in the tenancy agreement. Although the parties agreed that the Tenants initially gave notice to end their fixed-term tenancy early, they disagreed about whether a subsequent agreement reached between them allowing the Tenants to sublet their rental unit instead, effectively revoked the Tenants' notice to end their tenancy, and whether the Tenants actions or the Landlords' actions ultimately ended the tenancy on February 28, 2022.

The Agent argued that the end of the tenancy came about because the Tenants gave notice to end their tenancy early, and although they had agreed to allow the Tenants to sublet the rental unit, this did not revoke their notice to end tenancy. In any event, the Agent stated that the Tenants did not even forward them a potential subletter's contact

information until February 17, 2022, just over a week before the scheduled end date for the tenancy, March 1, 2022, and that the prospective subletter did not schedule a viewing until February 21, 2022, and submit an application for tenancy until February 22, 2022. The Agent stated that to avoid potential loss of rent, the Landlords advertised the unit for re-rental as well, and ultimately a new tenancy agreement was entered into by one of the people who responded to the Landlords' advertisements. In any event, the Agent stated that the potential subletter located by the Tenants would not have been approved. As a result, the Agent argued that the Tenants are required to pay the \$900.00 liquidated damages fee set out under clause 6 of the addendum to the tenancy agreement, plus recovery of the Landlords' \$100.00 filing fee, which the Landlords wish to withhold from the \$1,000.00 security deposit.

The Tenants argued that when the Landlords agreed that they could sublet the rental unit instead of ending their tenancy, their notice to end tenancy was therefore revoked by way of mutual agreement. The Tenants argued that rather than wait for them to find their own subtenant, the Landlords took it upon themselves to advertise the rental unit for re-rental at a higher rental rate, and to enter into a new one-year fixed-term tenancy agreement with new tenants, thereby ending the tenancy and preventing the Tenants from subletting. As a result, the Tenants argued that it is the Landlords who ended the tenancy early, and therefore they are not responsible to pay the liquidated damages fee or the Landlords' filing fee.

The Tenants therefore sought recovery of their \$1,000.00 security deposit as well as recovery of their own \$100.00 filing fee. Although the Tenants stated that they provided the Landlords with their forwarding address in writing on a blank piece of paper at the move-out inspection on February 27, 2022, the Agent denied this, stating that the Landlords did not receive a forwarding address until June 29, 2022, when the Tenants served them with a Notice of Dispute Resolution for a Direct Request for a different file number, which was ultimately dismissed with leave to reapply.

### Analysis

Based on the documentary evidence before me and the testimony of the parties at the hearing, I am satisfied that a tenancy to which the Act applies existed between the Landlords and the Tenants, which ended at the end of February, 2022.

#### Are the Landlords entitled to compensation for monetary loss or other money owed?

Although I find that the addendum to the tenancy agreement contains a liquidated damages clause in the amount of \$900.00, I dismiss the Landlords' claim for recovery of this amount for the following reasons. I am satisfied by several emails in the documentary evidence before me between the Tenants and an agent for the Landlords, that after the Tenants gave notice to end their tenancy, a subsequent agreement was reached between them allowing the Tenants to sublet the rental unit rather than end the tenancy. Although the Agent argued at the hearing that the Tenants mistook subletting for assignment, I am not satisfied that this is the case. The parties repeatedly referred to subletting throughout their written communications, and the term assignment was not used. At the hearing the Tenants also stated that they understand the difference between assigning a tenancy agreement and subletting, and their intention was to continue the tenancy and sublet the rental unit, not assign the tenancy agreement, and end their own tenancy.

I am satisfied that by advertising and subsequently re-renting the rental unit under a new one-year fixed-term tenancy agreement, the Landlords prevented the Tenants from continuing their tenancy and subletting their rental unit, and that they gained financially in doing so, as the rental unit was re-rented at a higher rental rate. I find that the Landlords actions are not consistent with the agreement allowing the Tenants to sublet their rental unit, rather than end their tenancy, as no action was required by the Landlords at all if the Tenants were permitted to sublet their rental unit, as the Tenants would continue to remain liable for rent under their tenancy agreement, regardless of whether they found a suitable sub-tenant or not.

Based on the above, I am satisfied that it is the Landlords who ended the tenancy, not the Tenants, and that in doing so they prevented the Tenants from subletting their rental unit as agreed upon, because rather than face the potential risk that the Tenants would be unable to find a suitable sub-tenant and therefore be unwilling to continue to pay rent, they wanted to secure their own new tenant under a new fixed-term agreement, at a higher rental rate. I find that it was not open to the Landlords to both agree to allow

the Tenants to sublet their rental unit rather than end their tenancy, *and* re-rent the unit to new tenants under a new fixed-term tenancy agreement. I therefore find that the Tenants are not liable to pay the liquidated damages fee and I dismiss the Landlords' Application in its entirety without leave to reapply.

Are the Tenants entitled to the return of their security deposit or double its amount?

As the Landlord's Application seeking to retain the deposit was dismissed, and neither party presented any evidence or testimony that the other had extinguished their rights under the Act in relation to the deposit, I find that the Tenants are entitled to its return. I do not find that they are entitled to double its amount, as the Tenants failed to satisfy me that they provided their forwarding address in writing to the Landlords on February 27, 2022, and the Agent acknowledged receipt on June 29, 2022. As a result, I find that the Landlords complied with section 38(1) by filing the Application seeking retention of the security deposit on July 13, 2022.

Are any of the parties entitled to recovery of the filing fee?

As the Landlords' Application is dismissed, I decline to grant them recovery of the filing fee.

As the Tenants were successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act.

Conclusion

The Landlords' Application is dismissed without leave to reapply.

I grant the Tenants' Application seeking compensation in the amount of \$1,100.00 for the return of their \$1,000.00 security deposit and recovery of the \$100.00 filing fee, and I order the Landlords to pay these amounts to the Tenants. Pursuant to section 67 of the Act, I therefore grant the Tenants a monetary order in the amount of **\$1,100.00**. The Tenants are provided with this Order in the above terms and the Landlords must be served with this order as soon as possible. Should the Landlords fail to comply with this order, it 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 Branch under Section 9.1(1) of the Act.

Dated: April 19, 2023

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Residential Tenancy Branch