



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

### Introduction

This Review Hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the application.

The tenants had made the application by way of the Direct Request process, which is an ex parte proceeding, without an oral hearing. On March 29, 2023 I granted a monetary order in favour of the tenants as against the landlord. The landlord applied for a Review of that Decision and order, based on new and relevant evidence, and this Review Hearing was ordered.

The *Residential Tenancy Act* specifies that following a Review Hearing, I may confirm, vary or set aside the original Decision and/or order.

Both tenants and the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The first tenant** (JC) testified that this fixed-term tenancy began on January 15, 2021 and reverted to a month-to-month tenancy after June 30, 2021. However, a copy of the tenancy agreement has been provided by the landlord for this hearing indicating that the fixed-term expired on July 31, 2021. The tenant testified that despite repeated requests, the landlord did not provide the tenants with a copy of the tenancy agreement. The tenancy ended on January 31, 2022.

Rent in the amount of \$1,200.00 was payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On December 29, 2020 the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. Move-in and move-out condition inspection reports were completed, and the tenants received a copy of the move-out report, but not the move-in report. The tenants provided a forwarding address on the move-out condition inspection report.

The rental unit is a duplex suite, and the landlord resided in the other suite.

The parties signed a Mutual Agreement to End Tenancy effective January 31, 2022 and a copy has been provided for this hearing.

The landlord tried to return \$460.00 of the security deposit but the tenants didn't accept it because it wasn't the full amount. No receipt has been provided for this hearing because the tenant asked for a receipt after paying \$600.00 cash, but didn't get one; receipts were difficult to get.

On December 31, 2021 the landlord said that the landlord's son would move into the rental unit, and the tenant advised that there was a month penalty.

**The second tenant** (AW) testified that an inspection was completed at move-out, and the tenants took photographs but were never given a copy of the report.

The tenants were not given a written notice to end the tenancy, and believed it was verbal notice for the landlord's son to move in, and the tenants looked for another place. The tenants were incorrect to believe they would get written notice. The landlord no longer had the desire to end the tenancy and the best the tenants could come up with was a Mutual Agreement to End Tenancy. The parties signed an agreement, a copy of which has been provided for this hearing, which indicates \$600.00 compensation to the

tenants. Rather than 1 month's compensation, and to address the misunderstanding, the tenants were not entitled to a full month's compensation, and the \$600.00 payment from the landlord was a compromise. It was not the security deposit, but compensation, and the security deposit wasn't paid back.

**The landlord** testified that on December 29, 2020 the tenants paid a portion only of the security deposit. The tenancy agreement specifies \$600.00 but the tenants only had \$450.00 and said they would pay the rest later, but didn't.

The landlord agrees that the tenants provided a forwarding address on the condition inspection report, and on February 13, 2022 the landlord offered to return \$450.00, plus interest at 2.5%.

The tenant (JC) completed a Two Month Notice to End Tenancy For Landlord's Use of Property, gave it to the landlord, and wanted the landlord to sign it, but the landlord didn't know what it was and refused to sign it. Three days later, on January 5, 2022 the tenant advised that the tenants had already put a deposit on another rental property. The tenant said he was struggling ,and the landlord helped by paying the tenant \$600.00 in cash when they moved out.

### Analysis

A landlord must return a security deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount of the deposit to the tenant.

In this case, the tenancy agreement specifies a security deposit in the amount of \$600.00, however the landlord testified that the landlord only received \$450.00 from the tenants, who indicated that the balance would be paid later, but that never happened.

The landlord agrees that the tenants provided a forwarding address in writing on the move-out condition inspection report, which is dated January 31, 2022, and testified that the \$450.00, plus interest was offered to the tenants on February 13, 2022 and refused. The tenants do not dispute that. That is within the 15 days required by the Act. The landlord has not made any applications regarding the security deposit.

The tenants have not provided any supporting evidence of the amount of the security deposit actually paid to the landlord, but relies totally on the amount written in the

tenancy agreement. Since the landlord did not sign or serve a notice to end the tenancy for landlord's use of property, the tenants were not entitled to any compensation at move-out. Considering the evidence that the landlord gave the tenants \$600.00 after the tenant said he was struggling, I prefer the testimony of the landlord as to the amount of the security deposit actually paid. I am not satisfied that the tenants have established any more than that.

Since the landlord attempted to repay the security deposit to the tenant within the 15 days required by law, I find that the tenants are not entitled to double the amount, but \$450.00. I have also calculated interest payable from January 15, 2021 to February 13, 2022, and I find that no interest is payable.

I vary the original Decision, to provide the tenants with a monetary order in the amount of \$450.00.

Since the landlord offered more than that within the 15 day period, I am not satisfied that the tenants should recover the filing fee from the landlord.

### Conclusion

For the reasons set out above, I hereby vary the original monetary order made March 29, 2023, changing the amount of the monetary order from \$1,300.00 to \$450.00.

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: September 13, 2023

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Residential Tenancy Branch