



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNRL-S, MNDCL-S, LRSD, FFL, MNSDS-DR, FFT**

### **Introduction**

This hearing dealt with monetary cross applications, as follows:

- The Landlord applied for unpaid and/or loss of rent and authorization to retain the security deposit
- The Tenants applied for return of double the security deposit
- Both parties requested recovery of the filing fee

All parties appeared and/or were represented at the hearing and the parties were affirmed.

### **Service of hearing materials**

The Landlord's proceeding package and evidence was sent to each Tenant by email on October 13, 2023 as authorized in a Substituted Service Order.

The Tenants sent their proceeding package and evidence to the Landlord via registered mail on October 16, 2023. The registered mail was returned as unclaimed. The Tenants provided the registered mail tracking number as proof of service. I confirmed the Tenants had printed the Landlord's correct mailing address of the envelope. The Landlord stated that he does check his mailbox frequently and the mail was likely returned because he did not check his mailbox.

Section 90 of the Act deems a person to be sufficiently served five days after mailing, even if the person avoids or refuses service. I was satisfied the Tenants met their obligation to serve the Landlord in a manner required under the Act and I was of the view the reason the Landlord did not receive the package is due to the Landlord's neglect to check his mailbox more frequently. Therefore, I deemed the Landlord to be

sufficiently served and I explained the Tenant's application to the Landlord and read from the Tenant's relevant evidence so that the Landlord may respond to it.

Issue(s) to be Decided

1. Is the Landlord entitled to an award for unpaid and/or loss of rent for September 2023?
2. Are the Tenants entitled to doubling of the security deposit?
3. Is either party entitled to recover the filing fee from the other party?

Background and Evidence

The tenancy started on April 1, 2023 on a month to month basis. The Landlord prepared a written tenancy agreement although the Tenant stated they did not receive their copy until May 2023.

The Tenants paid a security deposit of \$850.00 and were required to pay rent of \$1,700.00 on the first day of every month. The Tenants vacated the rental unit on August 31, 2023 and left the unit clean and undamaged.

The Tenants provided a forwarding address to the landlord via text message on September 20, 2023. The Tenants put their forwarding address on a form (RTB – 47) dated September 25, 2023 and sent it to the Landlord via email. The Landlord received the email on September 27, 2023. The Landlord made a claim against the security deposit on October 10, 2023.

There is no dispute that on August 22, 2023 the Tenant requested the Landlord give them access to the driveway so that they could place a sea container on it because they were preparing to move out of the rental unit. On August 24, 2023 the Landlord asked the Tenants for their move out date to which the Tenant responded it would be August 31, 2023.

The Landlord seeks compensation of \$1,700.00 for unpaid and/or loss of rent for the month of September 2023. The Landlord claims to have advertised the rental unit for rent after the Tenants vacated, in early September 2023, although he did not provide any copies of advertisements. The Landlord testified that he decided to re-rent it to someone he knew starting. The landlord was uncertain as to when the subsequent tenant moved in. Initially the landlord testified it was in October 2023 or November 2023 or December 2023. The Landlord eventually decided it was November 15, 2023

that he re-rented the unit even though his Application for Dispute Resolution indicates it was October 15, 2023.

The Landlord's basis for seeking loss of rent from the Tenants is that the Tenants failed to give one full month of notice, as required under their tenancy agreement and the Act.

The Tenant responded that the Landlord had sent them an email in July 2023 essentially begging them to move out the rental unit for personal financial reasons and because he was going to have people in working in the unit to make repairs and paint. If they did not move out. The Tenant testified that they and the Landlord had further communications about this orally and via text message. The Tenants acted upon the Landlord's request and made arrangements to move out. Although the Landlord later stated that he wanted them to stay the Tenants had already put in motion plans to move out.

The Tenant also argued that the Landlord had to make repairs to the rental unit, including electrical repairs, after an electrical inspection revealed improper wiring so the Tenants should not be held liable to pay for rent for September 2023.

The Landlord did not deny sending the email message to the Tenants in July 2023 and responded that on August 5, 2023 he had emailed the Tenants to state that he wanted them to be happy living in the rental unit. Further, he was uncertain as to the Tenant's move-out date until August 24, 2023. As for repairs, the Landlord stated the electrical repair did not take very long and he decided not to sell the unit.

I noted that when the Tenant informed the Landlord that they were moving out the Landlord's response to the Tenant did not indicate he was surprised or that he took any issue with receiving insufficient notice. The Landlord responded that he did not want the Tenants to damage the unit so he was cooperative. The Landlord confirmed the Tenants did not damage the unit and they left the rental unit clean.

Given the email message he sent to the Tenants in July 2023 and the lack of any issue with the Tenant's late notice, the Landlord was agreeable to reducing his claim to the amount of the security deposit.

The Tenant was not agreeable to settling the dispute for the amount of the security deposit, claiming the Tenants had to move their possession into storage and moved twice to accommodate the Landlord's plea that they move out.

## Analysis

Upon everything before me, I provide the following findings and reasons.

### **Tenant's application for return of double security deposit**

Section 38(1) of the Act provides that the Landlord has 15 days, from the date the tenancy ends or the Tenant provides a forwarding address in writing, whichever date is later, to either refund the security deposit, get the Tenant's written consent to retain it, or make an Application for Dispute Resolution to claim against it. Section 38(6) provides that if the Landlord violates section 38(1) the Landlord must pay the Tenant double the security deposit.

The Tenants initially provided their forwarding address to the Landlord via text message; however, text message is not a permissible way to serve a document under section 88. The Tenants subsequently served their forwarding address to the landlord via email, which may be considered a permissible method of service. I do not need to make a decision as to whether the emailed forwarding address was permissible service because the Landlord took action to make an Application for Dispute Resolution claiming against the deposit within 15 days of receiving it. Therefore, I find the Tenants are not entitled to doubling of the security deposit and I dismiss their application in its entirety.

The Tenants remain entitled to credit for the single amount of the deposit and I shall dispose of it under the Landlord's application.

### **Landlord's claim for loss of rent for September 2023**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 44 of the Act, a tenancy ends in various different ways, including giving a notice to end tenancy or where a tenant vacates or abandons the rental unit. The Tenants vacated the rental unit on August 31, 2023, bringing the tenancy to an end on that date.

A tenant in a month to month tenancy, such as this one, is required to give their landlord at least one full month of advance written notice under section 45 of the Act. This is also a term in the written tenancy agreement signed by the parties. Clearly, the Tenants did not provide such notice to the Landlord in sending their text message on August 22, 2023 to end the tenancy effective August 31, 2023. Therefore, I find the Tenants breached their tenancy agreement and the Act with respect to giving the Landlord notice to end the tenancy.

Although the Tenant did not use the word specifically, one of the arguments made by the Tenant during the hearing is consistent with the principle of estoppel. Estoppel is a legal principle under common law that prevents someone from asserting a right that contradicts what they previously said or agreed to. Section 91 of the Act states that common law applies to landlords and tenants except where the Act modifies or varies the common law. The common law applies to claims for loss of rent. Accordingly, I proceed to consider whether the Landlord was estopped from making a claim for loss of rent for September 2023.

I have read the entirety of the Landlord's email that he sent to the Tenant in July 2023. The email is very lengthy and below I only reproduce the relevant summation the Landlord wrote in closing the email:

*"So doing all of this, to try to keep this property, has completed [sic] defeated me. I can't sleep any less than I do, I already spend so little time with my wife that she doesn't feel loved like she should.*

*So please, to help me keep my sanity, my marriage, and my finances from all collapsing – could you please find somewhere to live, so that I can do the necessary work downstairs before we sell it?*

*Because doing all these repairs, painting, etc, with all of your stuff around, is going to make the work take 3 times as long.*

*And I'm sure it won't be fun for you guys with me and my inlaws [sic] coming in all the time to paint this or fix that."*

In reading the email, I find the Landlord communicated to the Tenants that he wanted them to move out of the unit to help resolve the desperate situation the Landlord found himself in. Although the Landlord does not expressly state in the email that he would waive entitlement or accept less than one month of notice from the tenants, I find that a person could reasonably infer that from the Landlord's desperate tone. Also, when the Tenants sent their text messages of August 22 and 24, 2023 the Landlord remained silent with respect to receiving short notice which may also be seen as not holding the Tenants liable to give one full month of notice.

As I noted in this decision, a text message is not a permissible way to serve a notice. The tenant's notice was given via text message; however, this notice is distinct from the forwarding address given via text message in that the Landlord acted upon the Tenant's text message regarding moving out. The landlord gave the tenant's the driveway access they requested and asked the tenants about a move-out inspection via text message.

The Landlord pointed to a message he sent to the Tenants on August 5, 2023 in an effort to rebut the estoppel argument and the Tenant claimed that message came after plans where in motion to move out based on the Landlord's email. I am of the view that the issue of estoppel is certainly arguable in this case so I turn to the other criteria for establishing entitlement to a monetary claim under sections 7 and 67 of the Act.

It is insufficient to merely prove one of the criteria set out for succeeding in a monetary claim. It is undeniable that the Tenants gave less than one full month of notice, which is a breach of the tenancy agreement and the Act. However, I must also be satisfied that the Tenant's inadequate notice is the reason the landlord suffered the loss of rent and the landlord took reasonable steps to mitigate the loss.

The Landlord testified that he chose not to look for a replacement tenant until after the Tenant's had already moved out. Certainly, the Landlord has the right to make that decision; however, if the Landlord chooses that course of action there is essentially no possibility that the unit will be re-rented for the month following the end of tenancy even if the Tenants did give sufficient notice and calls into question the Landlord's efforts to mitigate losses.

Also of consideration is that the Landlord's email of July 2023 indicates the Landlord needed to make repairs and paint the rental unit and that it would be more timely to do if the rental unit was unoccupied. It was also undisputed that the Landlord needed to make electrical repairs. I also heard the Landlord chose a person that he knew as the replacement Tenant. Accordingly, it appears to me that the Landlord chose not to try to re-rent the unit for September 2023 so that he may make repairs and quite possible wait for the person that he knew to take the unit. The decision to do that is a Landlord's cost of doing business and not a liability of the Tenants.

In light of the above, I find the Landlord's claim fails as I am unsatisfied the loss of rent for the month of September 2023 is the result of the Tenants' failure to give sufficient notice to end tenancy. Therefore, I dismiss the Landlord's claim in its entirety.

Having dismissed the Landlord's claim, I order the Landlord to return the security deposit to the Tenants, plus accrued interest. I calculate the accrued interest to be \$17.63 as of today's date.

In keeping with Residential Tenancy Policy Guideline 17, I provide the Tenants with a Monetary Order for \$867.63 for return of the security deposit plus interest.

### Conclusion

The Landlord's claim for loss of rent is dismissed without leave and the Landlord is ordered to refund the security deposit and interest to the Tenants.

The Tenant's application for double security deposit is dismissed, without leave.

Provided to the Tenants is a Monetary Order for the single amount of the security deposit and interest in the sum of \$867.63. If the Landlord fails to comply with the Monetary Order after it is served upon him, it may be filed in Provincial Court (Small claims division) to enforce as an order of the 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: March 22, 2024

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Residential Tenancy Branch