



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Introduction

This hearing was scheduled on the Tenants' application for dispute resolution under the *Residential Tenancy Act* (the Act) for return of the security deposit and the Landlord's application for unpaid rent, compensation for monetary loss or other money owed, authorization to retain the Tenants' security deposit, and authorization for reimbursement of the filing fee.

The Landlord did not attend the hearing.

Tenant N.V. and Tenant E.M. attended the hearing, with interpreter H.M.

Service of Dispute Resolution Proceeding Package and Evidence

At the initial hearing scheduled in this matter, the parties confirmed service and receipt of the Notice of Hearing as well as their respective evidence.

Preliminary Matters

An interim decision was issued on February 20, 2025, instructing the Tenants to serve the Landlord by email with a monetary worksheet. The Tenants submitted their completed monetary worksheet on February 27, 2025 and served the Landlord by email with the worksheet on that same date at 1:14 p.m.

Issues for Decision

Are the Tenants entitled to a Monetary Order for the return of all or a portion of their security deposit?

Are the Tenants entitled to a Monetary Order for damage or loss sustained as a result of the Landlord's breach of the tenancy agreement, Act or regulations?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to a Monetary Order for damage or loss sustained as a result of the Tenant's breach of the tenancy agreement, Act or regulations?

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in satisfaction of the monetary award requested?

Is the Landlord entitled to recover the filing fee for this application from the Tenants?

Background and Evidence

I have reviewed the evidence, and I have considered the testimony of the parties, but I will refer only to what I find relevant to my decision.

Evidence established this tenancy began on July 1, 2024, for a fixed term to June 30, 2026, and thereafter to continue on a month-to-month basis. The Tenants' monthly rent of \$3,600.00, was due on the first day of the month. The Tenants provided to the Landlord a security deposit in the amount of \$1,800.00, on June 14, 2024, which the Tenants state the Landlord has not returned any portion of to them. A copy of the tenancy agreement was provided in evidence.

On July 8, 2024, after contacting the Landlord, the Tenants provided their notice to end tenancy. The Tenants testified they spoke with the Landlord and the Landlord prepared the form of notice to end the tenancy for the Tenants' signature. A copy of the signed notice to end tenancy was provided in evidence. The notice to end the tenancy provided 30 days' notice, but the Tenants testified they moved out of the rental unit on July 29, 2024.

The Tenants testified they discussed with the Landlord the issue of rent that may be owed. Tenant N.V. stated that in discussions with the Landlord, the Landlord informed them they would not be responsible for rent for August 2024 if new tenant(s) were found. Tenant N.V. stated they placed an advertisement for the rental unit stating the monthly rental rate was \$3,600.00 per month. The Tenants secured new tenants for the unit who moved in on August 1, 2024. The Tenants submitted a copy of a text message with the Landlord's agent confirming the new tenants were moving in on August 1, 2024.

The Tenants further testified the Landlord conducted both a move-in and move-out inspection. They stated the Landlord never provided them with a copy of either inspection report. Tenant N.V. testified that at the time they moved out – the same month they moved in – the Landlord's agent advised them there was no damage to the rental unit.

The Tenants provided their forwarding address to the Landlord on September 9, 2024, by Canada Post registered mail, as well as sending their forwarding address to the

Landlord by email. The Tenants provided a copy of their forwarding address as well as confirmation of serving the Landlord by registered mail.

The Tenants further requested in writing to the Landlord a return of their rent payment for August 2024, in the amount of \$3,600.00, based upon the re-letting of the unit to new tenants who moved into the unit on August 1, 2024. The Tenants stated that to date the Landlord has not returned their August 2024 rent payment.

The Tenants stated the Landlord informed them he would retain their security deposit claiming he had paid an \$1,800.00 commission to his agent for consulting services regarding re-letting the unit.

The Landlord requested a monetary order for the consultant's commission in the amount of \$1,800.00 in his application. A copy of an invoice was provided by the Landlord, but there was no evidence to substantiate payment of the invoice. The Landlord also requested a monetary award of four (4) months rent totaling \$14,400.00 based upon the Tenants' breach of the fixed term lease. The Landlord provided no documents to substantiate this request. Finally, the Landlord's application requested the Tenants' security deposit be applied in satisfaction of any monetary award.

Analysis

Is the Tenant entitled to a Monetary Order for the return of all or a portion of their security deposit?

Section 38(4) allows a landlord to retain from a security and/or pet damage deposit if, at the end of the tenancy, the tenant agrees in writing that the landlord may retain an amount to pay a liability or obligation of the tenant.

If the landlord does not have the tenant's agreement in writing to retain all or a portion of the security and/or pet damage deposit, section 38(1) of the Act states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, the landlord must either repay any security or pet damage deposit or make an application for dispute resolution claiming against the security deposit or the pet damage deposit.

Section 38(6) of the Act states that if the landlord does not return the deposit(s) or file a claim against the tenant within fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

In this case, the Tenants have established they provided their forwarding address to the Landlord on September 9, 2024, serving the Landlord by Canada Post registered mail.

Section 90 of the Act provides that documents served by mail are deemed received five (5) days after mailing. The Tenants' forwarding address is thus deemed to have been served by September 14, 2024.

However, the Landlord did not file an application setting forth a claim against the security deposit until January 2, 2025 – well in excess of the fifteen (15) days within which the Landlord was required to do so under section 38(6) to avoid an award to the Tenants of double the security deposit.

Based on the evidence before me, I find the Landlord was deemed served with the Tenants' forwarding address on September 14, 2024, the fifth day after the Tenants served their forwarding address to the Landlord by Canada Post registered mail. I further find the Landlord was obligated to obtain the Tenant's written consent to keep the security deposit or to file an application no later than 15 days after receiving the Tenants' forwarding address or the tenancy ending. In this case, the Landlord did not make a claim against the Tenants' security deposit until January 2, 2025.

Furthermore, no written documentation of the Tenant's consent that the Landlord retain the security deposit was provided in evidence. I find that there is no evidence provided to establish the Landlord had the Tenant's agreement in writing to retain the security deposit or that the Landlord applied for dispute resolution within 15 days of receiving the Tenants' forwarding address to retain a portion of the security deposit as required under section 38(1).

Under section 38(6) of the Act, I find the Landlord must pay the Tenants double the amount of the security deposit, plus interest on the initial deposit, as the Landlord has not complied with section 38(1) of the Act.

Furthermore, section 38(2) of the Act provides:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) [*2 opportunities for inspection*],

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

In this case, I find the uncontested evidence establishes the Landlord did not provide the Tenants with copies of both the move-in and move-out inspection reports. Therefore, pursuant to section 38(2)(c), I find the Landlord's right to claim against the security deposit has been extinguished.

Therefore, I find the Tenants are entitled to a Monetary Order for the return of double their security deposit under sections 38 and 67 of the Act, in the amount of \$3,600.00, together with interest for the initial security deposit in the amount of \$30.44 as provided under the Regulation.

Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

To be awarded compensation for a breach of the Act, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Based on the evidence before me, the Tenants' testimony, and on a balance of probabilities, I find the Tenants have established a claim for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

In this case, the Tenants provided sufficient evidence to establish the Landlord would return their August 2024 rent payment if the unit was re-let for that month. The Tenants testimony was they found a suitable replacement tenant who took possession of the rental unit as of August 1, 2024.

Section 7 of the Act requires a party to mitigate its damages. The Tenants have established they secured new tenants for the Landlord, having advertised the unit for rent at \$3,600.00 per month. The Landlord's agent's text to the Tenants confirms the new tenants took possession of the unit on August 1, 2024.

I find the Tenants have provided sufficient evidence to establish they are entitled to a return from the Landlord of the rent they paid for August 2024 in the amount of \$3,600.00.

The Landlord's Application

As I have found the Tenants are entitled to the return of their security deposit, as well as the rent paid for August, 2024, I find the Landlord has failed to establish with adequate probative evidence that he is entitled to four (4) months' rent in the amount of \$14,400.00 for the Tenants' early end to the fixed term tenancy, as new tenants were

successfully secured as of August 1, 2024. Additionally, the Landlord failed to establish payment of a consultant's commission or provide an explanation why a consultant was necessary considering the Tenants advertised the unit and found the new tenants. I find the Tenants are not responsible for the Landlord's decision to retain a consultant or agent for managing the rental unit. That remains wholly within the Landlord's control and discretion.

Therefore, I dismiss the Landlord's application in its entirety without leave to reapply.

Conclusion

I grant the Tenant a Monetary Order in the amount of **\$7,230.44** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for double the security deposit (\$1,800.00 x 2) under section 38(6)	\$3,600.00
Interest on the initial security deposit	\$30.44
a Monetary Order for return of the Tenants' rent payment for August 2024 under section 67 of the Act	\$3,600.00
Total Amount	\$7,230.44

The Tenants are provided with this Order in the above terms and 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.

I dismiss the Landlord's application in its entirety, without leave to reapply.

This decision is issued on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 20, 2025

Residential Tenancy Branch