

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act

This hearing also dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- a Monetary Order for the return of all or a portion of their security deposit under sections 38 and 67 of the Act

The Landlord attended the hearing.

Tenants S.D., V.D., and M.D. attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package) and Evidence

The Landlord testified that they served the Tenants with the Proceeding Package for application 910215376 and their evidence by courier on September 28, 2025, and provided a copy of the tracking number. The Landlord stated that the package was subject to multiple delivery attempts but was ultimately returned to sender. The Landlord also attempted service by email and text message; however, the email address used contained a missing character.

The Tenants testified that they did not receive the Proceeding Package or the Landlord's evidence. Nevertheless, they were aware of the hearing, understood the Landlord's claims, and were prepared to proceed. The Tenants confirmed that the couriered package was sent to their correct address although it was not delivered.

Based on the above, I find that the Tenants were not served with the Landlord's Proceeding Package or evidence. However, I also find that they were aware of the hearing and prepared to proceed. As the Tenants did not receive the Landlord's documentary evidence, I have excluded that evidence, except for documents uploaded by both parties, as those were in the possession of both parties.

The Tenants testified that they served the Landlord with the Proceeding Package for application 910217085 and their evidence by mail and email. The Landlord confirmed receipt of the Tenants' Proceeding Package and evidence. I therefore find the Landlord was sufficiently served under section 71(2)(c) of the Act.

Issues to be Decided

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

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

Background and Evidence

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

The Landlord testified that the tenancy was agreed to begin on September 1, 2025, with monthly rent of \$3,600.00 and a security deposit of \$1,800.00, which the Tenants paid in two installments on August 6 and 7, 2025. The Landlord stated that although the Tenants never signed the tenancy agreement, they paid the deposit and indicated they would sign the agreement upon moving in on September 1, 2025.

The Landlord testified that the Tenants did not arrive at the rental unit on September 1, 2025, so the Landlord called them to inquire. According to the Landlord, the Tenants returned the call that evening and advised that, due to a medical emergency, they would not be moving in.

The Landlord testified that they re-rented the unit effective September 15, 2025, and allowed the new tenants to begin moving belongings in around September 5, 2025. The Landlord stated that the new tenants paid rent only for the second half of September, starting September 15, 2025. The Landlord seeks \$1,800.00, representing half a month's rent, to cover lost rental income from September 1 to 15, 2025.

The Tenants confirmed that they intended to move into the rental unit on September 1, 2025, and pay \$3,600.00 per month in rent. They also confirmed that they paid the \$1,800.00 security deposit in two installments on August 6 and 7, 2025. The Tenants testified that they were unable to move in due to an unforeseen family medical emergency and stated that they informed the Landlord on the evening of September 1, 2025, as soon as possible after the emergency arose.

The Tenants testified that the Landlord initially agreed to return their security deposit once the unit was re-rented but later refused to do so. They argued that the Landlord re-rented the property quickly and collected both a deposit and rent from the new tenants, making it unfair to retain their deposit. The Tenants seek the return of the \$1,800.00

security deposit, asserting that they acted in good faith and that the Landlord suffered no financial loss because the unit was re-rented promptly. The Tenants submitted that they provided the Landlord with their email address but did not provide a physical forwarding address in writing.

Analysis

Is the Landlord 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

Section 16 of the Act states that 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.

The Act defines “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In this case, I find that the parties agreed to the start date of September 1, 2025, the rent amount of \$3,600.00 per month, and the security deposit of \$1,800.00 was paid. Although the Tenants did not sign the written agreement or take possession of the unit, these actions indicate that a tenancy agreement was formed between the parties.

The Tenants informed the Landlord on September 1, 2025, that they would not be moving in due to a medical emergency, and did not pay any rent for the month of September 2025.

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

While I understand the Tenants’ position that the medical emergency was unexpected, I find that the Tenants’ failure to pay rent or provide sufficient notice to end the tenancy constitutes a breach of the tenancy agreement. I further find that the Landlord acted reasonably to mitigate their loss by re-renting the unit effective September 15, 2025. I accept the Landlord’s testimony that they received only half a month’s rent from the new tenants, resulting in a financial loss of \$1,800.00 in rental income.

I do not accept the Tenants' submission that the new tenants' security deposit should offset this loss. A security deposit is held by the Landlord as security for any liability or obligation of the new tenants under their tenancy agreement and cannot be applied to compensate for losses arising from a prior tenancy.

I therefore find that that the Landlord has established their claim for lost rental income in the amount of \$1,800.00.

Under section 72(2)(b) of the Act, I allow the Landlord to retain the Tenants' security deposit of \$1,800.00 in full satisfaction of the monetary award.

Are the Tenants 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 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 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 the security deposit or make an application for dispute resolution claiming against the security deposit.

Although the Tenants submitted that they provided their email address to the Landlord, I find that this does not meet the requirements of section 38 of the Act. Section 38 requires a tenant to provide their forwarding address in writing. The term "forwarding address" is commonly understood to mean a physical mailing address, and the Act does not indicate that an email address satisfies this requirement. The purpose of this provision is to ensure the landlord has a physical address for delivering payment or legal notices in compliance with the Act's service requirements. While email may facilitate communication, I find that it does not meet the statutory requirement for a forwarding address under Section 38.

Therefore, as of the date of the hearing, I find that the 15-day timeline for the Landlord to return the deposit or file an application had not yet been triggered, and the Landlord was not required to repay the security deposit.

Accordingly, the Tenants' claim for the return of all or a portion of their security deposit is dismissed. As I have allowed the Landlord to retain the Tenants' security deposit of \$1,800.00 in full satisfaction of the monetary award above, the Tenants' claim is dismissed without leave to reapply.

Conclusion

The Landlord's application for lost rental income is granted in the amount of \$1,800.00. Pursuant to section 72(2)(b) of the Act, I allow the Landlord to retain the Tenants' security deposit of \$1,800.00 in full satisfaction of this monetary award.

The Tenants' application is dismissed, without 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 Act.

Dated: December 12, 2025

Residential Tenancy Branch