



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALL STAR DEVELOPMENTS  
and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes

For the landlord: MND MNSD FF  
For the tenants: MNSD FF

### Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for authorization to retain all or part of the tenants’ security deposit, and to recover the cost of the filing fee.

The tenants applied for the return of all or part of their security deposit, and to recover the cost of their filing fee.

Tenant R.M. (the “tenant”) attended the teleconference hearing. The landlord did not attend the teleconference hearing. The hearing process was explained to the tenant and an opportunity was given to ask questions about the hearing process. Thereafter the tenant gave affirmed testimony, was provided the opportunity to present the tenants’ evidence orally and in documentary form prior to the hearing, and make submissions to me.

Both parties were provided with the Notice of Dispute Resolution Hearing when they filed their respective Applications. Following the ten minute waiting period, the application of the landlord was **dismissed without leave to reapply**. The hearing continued with consideration of the tenants’ Application. The hearing was concluded after fifteen minutes. I accept the tenant’s undisputed testimony that the landlord was served with the tenants’ Application and documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matter

At the outset of the hearing, the tenant stated that the tenants were not waiving their rights to double the amount of the security deposit if they were so entitled under the *Act*.

### Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Are the tenants entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The tenant testified that a fixed term tenancy began on April 1, 2013 and reverted to a month to month tenancy after April 1, 2014. The tenant stated that the tenants vacated the rental unit on August 29, 2015. The tenant affirmed that monthly rent was \$1,495.00 per month and was due on the first day of each month. The tenant stated that they paid a security deposit of \$750.00 at the start of the tenancy.

At the end of the tenancy, the tenant stated that they surrendered \$150.00 of their security deposit towards cleaning the rental unit, and that the landlord has not returned the remaining \$600.00 of their security deposit even though the tenants provided their written forwarding address on the outgoing condition inspection report dated August 28, 2015, a copy of which was submitted in evidence. The tenants vacated the rental unit on August 29, 2015.

The tenants are seeking double the amount of their \$600.00 security deposit in the amount of \$1,200.00 plus the recovery of the cost of the \$50.00 filing fee.

### Analysis

Based on the tenants' undisputed documentary evidence and testimony, and on the balance of probabilities, I find the following.

**Return of security deposit** – Firstly, I find the landlord breached section 19 of the *Act* which states:

**Limits on amount of deposits**

**19** (1) **A landlord must not require or accept** either a **security deposit** or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

[my emphasis added]

Given the above, I find the maximum security deposit that could be required and accepted by the landlord would have been \$747.50. Therefore, **I caution** the landlord to comply with section 19 of the *Act* in the future. Section 38 of the *Act* also applies and states:

**Return of security deposit and pet damage deposit**

**38** (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

**(a) the date the tenancy ends, and**

**(b) the date the landlord receives the tenant's forwarding address in writing,**

**the landlord must do one of the following:**

**(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;**

**(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.**

**(6) If a landlord does not comply with subsection (1), the landlord**

**(a) may not make a claim against the security deposit or any pet damage deposit, and**

**(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.**

[my emphasis added]

Based on the above, and taking into account that the tenants agree that they surrendered \$150.00 of their \$750.00 security deposit for cleaning of the rental unit, I find the landlord breached section 38 of the *Act* by failing to return the tenants' \$600.00 portion of the tenants' security deposit within 15 days of August 29, 2015, which was the end of tenancy date and one day later than August 28, 2015, the date the tenants provided their written forwarding address on the outgoing condition inspection report which was submitted in evidence. I find the landlord had until September 13, 2015 to return the balance of the security deposit which was not done and taking into account that the landlord failed to attend this hearing and has had their Application dismissed without leave to reapply as a result, which I find is the equivalent of not claiming towards the security deposit of the tenants. Therefore, I grant the tenants double the remaining balance of their security deposit which as follows:

- Security deposit balance of \$600.00 doubles to **\$1,200.00**

As the tenants' application had merit, **I grant** the tenants the recovery of their **\$50.00** filing fee.

I find the tenants have established a total monetary claim in the amount of **\$1,250.00** comprised of \$1,200.00 for the doubled security deposit, plus recovery of the tenants' \$50.00 filing fee.

Pursuant to section 67 of the *Act*, **I grant** the tenants a monetary order in the amount of **\$1,250.00**.

### Conclusion

The landlord's application is dismissed without leave to reapply.

The tenants' application is successful.

The tenants have established a total monetary claim of \$1,250.00 as indicated above. The tenants have been granted a monetary order pursuant to section 67 of the *Act*, in the amount of \$1,250.00. This order may be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 8, 2016

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Residential Tenancy Branch